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INDEX

TO

FULL BENCH RULINGS

OF THE

CALCUTTA HIGH COURT,

FROM 1862 TO THE PRESENT DATE.

BY

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PREFACE.

As matters stand at present, it is not easy for judicial officers, members of the bar, and legal practitioners to ascertain at a glance what points of law have, and what points have not, been authoritatively settled by the Calcutta High Court. Indeed, in many parts of the Mofussil, where complete legal reports are scarce and are often not be found, it often happens that decisions are at variance with Full Bench Rulings, and discussions arise upon points which have been finally decided.

The only proper mode of meeting the difficulty is to publish the Full Bench Decisions of the High Court, not in chronological order, but duly classified according to their subject matter. Such a work would, however, cost much time and trouble, and is not likely to be accomplished for some time to come.

At present, the only books which enable the searcher to ascertain, without reference to numerous volumes and indexes, the Full Bench *dicta* of the High Court, are Sutherland's Special Number and the "Indian Digest," recently compiled by Messrs. Cowell and Woodman. The former work is, however,

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most incomplete as it extends only to July, 1864. The latter work contains so many Rulings collected from all parts of India, that it is no easy task to distinguish and select the Calcutta Full Bench Rulings, which alone are binding on the Courts of Lower Bengal.

Under such circumstances, this small compilation will, perhaps, prove acceptable, both to the public at large and to those whose duties are connected with judicial and forensic business. It does not pretend to do more than supply, temporarily, a much felt and real want—in short, it is a mere Vade Mecum prepared with the view of enabling the searcher to ascertain with ease and rapidity at what page of the voluminous Law Reports, now in existence, the Full Bench Rulings of the Calcutta High Court are to be found.

The classification adopted in this Index will, it is hoped, be found methodical and easy; the subjects are alphabetically arranged; and it has been sought to illustrate, whenever practicable, the sections and text of the laws at present existing.

The Full Bench Rulings of Benches consisting of less than three Judges have been marked with an asterisk; the Rulings which changes in the law have rendered obsolete have been omitted.

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REFERENCES.

W. R.=Sutherland's Full Bench Rulings.

1, 2, &c. W. R.=Sutherland's Weekly Reporter.

S. C. C. R.=Sutherland's Small Cause Court References.

B. L. R.=Bengal Law Reporter.

Marsh.=Marshall's Reports.

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INDEX

TO

FULL BENCH RULINGS.

ACCRETION.

(1). Held, notwithstanding a previous full bench ruling (W. R. 45*), that, in the case of alluvial formations, mere identity of site is not sufficient to over-ride the positive title acquired by gradual accretion, under the provisions of Clause 1, Section 4, Regulation XI. 1825.—3 W. R. p. 51.*

Gradual accretion over-rides identity of site.

ACT XIX. 1843.

(2). A deed of sale, registered under XIX. 1843 does not, owing to the mere fact of registry, invalidate a prior unregistered mortgage.—5 W. R. p. 61.

Effect of priority of registry.

ACT I. 1845.

(3). An agreement by a former proprietor, amounting to an alienation of half of certain accreted chur lands in favor of an adjoining estate, is an encumbrance, void as against auction-purchasers, under Section 26, I. 1845.—2 W. R. 191.

Example of encumbrance under I. 1845, Section 26.

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ACT XL. 1858.

(4). Every person, not being a European British subject, who has not attained the age of 18 years, is a minor for the purposes of XL. 1858, unless he is a proprietor of an estate paying revenue to Government, who has been taken under the jurisdiction of Court of Wards. The care of his person, and the charge of his property, are subject to the jurisdiction of Civil Court, and, for that purpose, he is a minor, whether proceedings have or have not been taken for the protection of his person, or the appointment of a guardian.—10 W. R. F. B. 36.

Every person under 18 years of age is a minor under Act XL. 1858.

(5). A certificate, granted under Section 7, may, under Section 21, be recalled summarily, without the accounts being taken in a suit under Section 19, where the application for recall of certificate is based on charges of waste and mismanagement.—7 W. R. p. 522.

Power to recall certificate.

ACT VIII. 1859.

Vide Civil Procedure Code.

ACT X. 1859.

Vide Rent Law.

ACT XIV. 1859.

Section 15.

(6). If a landlord ejects a ryot of his own authority, without the intervention of the Collector or a Court of law, the ryot can bring an action under Section 15, XIV. 1859 *(non obstante*

Right of suit by dispossessed tenant.

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Clause 6, Section 23, X. 1859); and, if the suit is brought within six months, the ryot will be entitled to recover possession, without reference to the title of the landlord to eject him.—9 W. R. p. 513.

Vide also heading of limitation.

ACT XLII. 1860.

Sections 10 *and* 11.

Construction of Sections 10 and 11, XLII. 1860.

(7). The intention of the legislature, under Sections 10 and 11, XLII. 1860, was that the decrees of Small Cause Courts should be satisfied out of the moveable property, in the first instance, and that a certificate should not be granted under Section 11, until the Court is satisfied that there is not sufficient property, within limits of Court's jurisdiction.—S. C. C. R. p. 55.*

ACTS XXIV. AND XXV. VICT. C. 204.

Power of High Court to continue attachment, pending appeal.

(8). A plaintiff, before judgment, attached defendant's property, but his suit was dismissed by the High Court. He then filed an appeal to the Privy Council, and on his application, the High Court held that it could not continue the attachment over defendant's property, pending the appeal, nor could it, under Section 81, VIII. 1859, call on defendant (respondent) to give security for value of property attached, before being allowed to recover it.—12 W. R. F. B. 16.

Power to restore appeal to file.

(9). The High Court has power, and ought to exercise discretion as to restoring to the file appeals dismissed for default, or removed for any reason from the file.—7 W. R. p. 531.

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Section 15.

Power to order restitution in certain cases.

(10). A plaintiff obtained an ex-parte decree in an Act X. suit, and took out execution. The decree was modified on appeal, and it was held that plaintiff was only entitled to part of the sum he had recovered in execution. The Collector however, before whom the case was originally tried, refused to order the plaintiff to make restitution, and the High Court, in the exercise of its powers of jurisdiction, ordered him to make it.—7 W. R. 520.

Power to set aside order of review when improperly made.

(11). The Lower Court having admitted a review after ninety days from date of decree, without showing sufficient cause proved to its satisfaction, for the delay, its order was set aside by the High Court under its general powers of supervision.—8 W. R. p. 184.*

Power to set aside orders improperly made under Section 73, VIII. 1859.

(12). When a Court exceeds its jurisdiction, by allowing the name of an alleged purchaser of the rights of the plaintiff to the suit to be substituted for that of the said plaintiff, and also by allowing the suit to be withdrawn on the application of the party so substituted, the High Court will interfere, in the exercise of its powers of superintendence, and set aside the orders.—9 W. R. 309.*

High Court has no power to interfere with a legal, though indiscreet, order.

(13). The High Court refused to interfere with an order of a Lower Court which, although apparently arbitrary and indiscreet, that Court was by law authorized to make.—7 W. R. p. 519.

High Court cannot stay criminal proceedings under Section 171, Criminal Procedure Code.

(14). When a Lower Appellate Court commits a party for trial on a charge of perjury or forgery, or makes over a case under Section 171, Criminal Procedure Code, and a special appeal is lodged, the High

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Court will not, either as a Civil or as a Criminal Court of revision, order the criminal proceedings to be stayed, until appeal has been heard or determined.—5 W. R. Misc. p. 24.

Nor interfere with a division of profits by Judge under XIX. 1812, and VI. 1827.

(15). The High Court cannot interfere when a District Court, after attaching a joint undivided estate under Regulation XIX. 1812, and making it over to Collector under Regulation VI. 1827, orders the Collector to divide the surplus profits among the several shareholders.—7 W. R. 273.

Nor order release of person arrested under Regulation VII. 1799.

(16). When, in execution of a summary decree obtained in 1851, under VII. 1799, against the father of A, A was arrested and lodged in Jail, in January 1867—held that the High Court could not, under its general power of superintendence, interfere to order the release of A.—7 W. R. p. 430.*

Letters Patent, Section 39.

Rejection of application for review is not a final order.

(17). An order of the High Court, rejecting an application for review of judgment, is not a final order from which an appeal lies to Privy Council under Section 39 of Letters Patent.—6 W. R. Misc. p. 102.

Appeals from orders of High Court in miscellaneous department.

(18). An appeal will lie from an order passed by the High Court in the miscellaneous department, in a case of execution in which amount involved exceeds 10,000 Rupees, as well as in any other case in which the Court shall admit an appeal, when the amount or value is below 10,000 Rupees.—8 W. R. p. 147.

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ACT XXVIII. VICT. C. 15.

Letters Patent, Section 15.

Appeals from judgments of Division Benches when allowable under Section 15.

(19.) An appeal lies, under Section 15 of the new Letters Patent of the High Court, to the Court at large, from the judgment (not being a sentence or order passed or made in a criminal trial) of a Division Court, in the exercise of its appellate jurisdiction, when the Judges of such Court are equally divided in opinion, and do not amount in number to a majority of the whole of the Judges.—7 W. R. 512.

Section 36.

And when not allowable under Section 36.

(20.) A judgment of the senior Judge of a Division Bench of the High Court is final within the meaning of Section 36 of the new Letters Patent of 1867, even when junior Judge entertains doubts and expresses a final opinion—neither can junior Judge refer a question for the decision of the Full Bench without concurrence of senior Judge.—7 W. R. p. 277.

ACT XXIII. 1861.

Section 11.

Effect of appeal under Section 11.

(21). An appeal under Section 11, XXIII. 1861, does not affect a purchaser at a sale in execution of a decree, but only the parties to a suit. The only way to raise a question between judgment-debtor and purchaser at a sale execution is by regular suit.—9 W. R. p. 230.

Mesne profits when obtainable in the ab-

(22). A decree of the High Court, technically for possession only, which reinstates a party in the possession in which he was when

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sence of a specific decree for mesne profits.

ousted, also gives right to wasilat or mesne profits, to be ascertained in execution under Section 11, XXIII. 1861.—9 W. R. 407 (*a*).

Case showing who is not a party under Section 11, XXIII. 1861.

(23). In a former suit by A against B, and his daughter C (which was subsequently revived against C, purely as her father's representative), possession was decreed against C, in her representative, and dismissed against her, in her individual capacity. The decree-holder then sold, in execution, C's private property, and C brought a suit for cancelment of sale—held that the suit would lie because C was not a party under provisions of Section 11, XXIII. 1861.—11 W. R. F. B. 1.

No special appeal lies under Section 11, against order under Sections 270, 271, VIII. 1859.

(24). Section 11, XXIII. 1861, does not give an appeal from an order given, under Sections 270, 271, VIII. 1859, as to application and distribution of proceeds of property sold in execution, under decrees of rival decree-holder.—W. R. 116.

Nor against refusal of re-admission under Section 347, VIII. 1859.

(25). No special appeal lies under Section 11, XXIII. 1861, from a decision passed by a Lower Court, rejecting an application for the re-admission of an appeal under Section 11, XXIII. 1861.—10 W. R. F. B. p. 39.

But a special appeal will lie from a decision on appeal relating to execution.

(26). A special appeal lies, under Section 11, XXIII. 1861, from a decision passed on appeal from an order relating to execution of decree. —W. R. 83.

(*a*) It is doubtful whether this Ruling is Full Bench, or merely an *obiter dictum*. *Vide* 10 W. R. p. 131.

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Section 35.

Cases in which High Court will interfere under Section 35, XXIII. 1861.

(27). The High Court has power, under Section 35, XXIII. 1861, to call for the record where a Lower Court exercises an Appellate Jurisdiction, where it has none, or exceeds it, where it has—it may set aside that part of the order which is in excess of jurisdiction, and, where the Court had no jurisdiction, set aside its order altogether, and refer it to a Court which has; even if it be too late to prefer an appeal thereto.—6 W. R. Misc. p. 77.

Cases in which the High Court will not interfere under Section 35, XXIII. 1861.

(28.) Where a Collector affirmed on appeal an order of a Deputy Collector for sale of an under-tenure, but afterwards upon review set aside his order, as made without jurisdiction—held that the High Court had no power to interfere with the order of the Deputy Collector, which was final, and that the mistake of the Collector afforded no ground for doing so.

Quære whether Collector's Court is a Court subordinate to High Court, within meaning of Section 35, XXIII. 1861.—6 W. R. Act X., Rulings p. 53.

(29). The High Court cannot, under Section 35, XXIII. 1861, interfere with the order of a Lower Court setting aside a sale of moveable property in execution of a decree; even though the Lower Court has thereby acted wholly without jurisdiction, and done injury to a *bonâ-fide* purchaser.—5 W. R. Misc. p. 25.

Section 36.

Section 36 not applicable to appeals to Privy Council.

Vide Regulation XVI. 1797.

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ACT VI. 1862.

Section 9.

Landlord can measure all subordinate tenures.

(30). Held, that a proprietor of an estate is entitled, under Section 9, VI. 1862, to measure the lands of any subordinate tenure, within the limits of his estate, whatever the character or size of the tenure, or amount of rent paid in respect of it.—8 W. R. p. 149.*

Section 11.

Collector can decide what is standard pole of measurement.

(31). Held, that when the right of a proprietor to make a measurement of a tenure is disputed solely on the ground that the pole with which the measurement is intended to be made is not the standard pole of measurement of the Pergunnah, as provided in Section 11, and the parties are at issue, as to what is the length of the standard pole, the Collector has jurisdiction to enquire into and decide the question, as to what is the true length of the standard pole, and an appeal will lie to the Judge from his decision.—14 W. R. F. B. 4.

And an appeal will lie to judge from his decision.

Section 19.

Power of Deputy Collector.

(32). A Deputy Collector cannot, under Section 19, VI. 1862, hear appeals upon a reference by a Collector.—6 W. R. 65 Act X. Rulings.

ACT XI. 1865.

Section 20.

Power of Small Cause Court Clerks.

(33). Clerks of Small Cause Courts cannot sign copies of judgments or certificates under Section 20, XI. 1865.—S. C. C. R. p. 136.*

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Section 22..

(34). Only questions which arise in the trial of a suit, and not such as arise on applications for execution of decree, can be referred under Section 22, XI. 1865.—5 W. R. S. C. C. R. p. 19.

References not allowed in execution cases.

ACT XX. 1866.

Section 83.

(35). A suit will not lie in the Civil Courts instead of an appeal under Section 83, XX. 1865.—*Vide* Civil Procedure. Cause of Action, 10 W. R. F. B. 51.

Civil suit will not lie in lieu of appeal under Section 83.

ADOPTION.

(36). The adoption of a grand-nephew is not repugnant to Hindoo Law.—W. R. 121.*

Adoption of grand-nephew is allowable.

CIVIL PROCEDURE CODE.

CHAPTER I, SECTION 1.

Jurisdiction of Civil Courts.

(37). When a decree is transmitted, under Section 286, VIII. 1859, from one Court to another, the Court to which it is transmitted has jurisdiction to determine whether or not execution is barred under XIV. 1859; such Court has also jurisdiction to cancel its own order for striking the execution case off the file, whatever striking off amounts to.—10 W.R. F. B. 46.

In execution cases when transmitted.

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When several causes of action are joined in one suit.

(38). Causes of action, joined in one suit, may be tried by a Court which has jurisdiction as to the entire value, although the value of one of the causes of action is below the value cognizable by it—*e. g.*, a subordinate Judge has jurisdiction to try a suit for land with mesne profits, although the value of the land alone is under the value cognizable by him.—7 W. R. 175.

Jurisdiction of District Judge.

To divide profits of attached estates.

(39). When a joint undivided estate has been attached under Regulation V. 1812, Section 26, and made over to the management of the Collector, under Regulation VI. 1827, the District Judge has power to divide the surplus profits of the estate among the several share-holders according to their respective shares.—7 W. R. 273.

Jurisdiction of Small Cause Courts.

To try questions of title.

(40). Small Cause Courts have jurisdiction to try questions of title incidentally arising in suits cognizable by them.—W. R. 127.

And in cases of constructive residence.

(41). The mere fact of a zemindar's omlah residing in a cutcherry belonging to the zemindar within the jurisdiction of a Small Cause Court, does not make the said zemindar a constructive dweller within the jurisdiction of the Court.—S. C. C. R. 18.*

And of set-off.

(42). A Small Cause Court has no jurisdiction to try a plea of set-off when it is in excess of the amount to which the cognizance of the Court is limited, and when it represents a rent claim which is solely cognizable by the Revenue Courts.—S. C. C. R. 21* (*a*).

(*a*) Several rulings bearing on the jurisdiction of the Civil and Revenue Courts have been here omitted, because, owing to the recent changes in the law, they are no longer of any use.

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Cause of action—suits which will lie (*a*).

(43). A suit will lie against a karta, or manager of a joint Hindoo family, for accounts, even when the members of the family, who sue, were minors, during the time for which accounts are sued for.—13 W. R. F. B. 75.

For accounts.

(44). A suit will lie by the owner of land against his tenant for damages, when tenant cuts down trees without leave or license.—S. C. C. R. p. 17*.

For damages.

(45). On proof of actual substantial resulting loss, a suit for damages will lie against proprietor, who, by erecting an embankment on his own land, impedes the flow of surface drainage water from the higher land of another proprietor.—W. R. 25.*

For damages.

(46). A charge of extortion can be entertained in the Civil Courts.—W. R. 85.

Extortion.

(47). When a Hoondi returns, dishonoured, to the hands of the endorser, he may sue the drawer upon it, and recover the amount, if it appears that he is the lawful holder of it.—5 W. R. 86.*

To recover amount of dishonoured Hoondi.

(48). In districts in which Mitakshara law prevails, a son acquires by birth a right in the ancestral property, and is entitled to sue for partition thereof during his father's life-time.—8 W. R. 15.

For partition of Hindoo ancestral property.

(49). Under the Mitakshara law, a suit will lie by the son to recover from a purchaser ancestral property improperly sold by the father. (*Vide* also onus probandi).—9 W. R. p. 511.

To recover possession of ancestral Hindoo family property.

(*a*). The marginal headings have been arranged as far as possible in alphabetical order; accounts, damages, extortion, hoondi, partition, possession, &c.

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(50). A suit will also lie by a son to recover property purchased by a father from the profits of such ancestral property; the father cannot plead that such property is self-acquired.—6 W. R. 256.*

(51). A member of a joint Hindoo family, living under the Mitakshara law, and having joint family property, died, entitled to an undivided share. A sued C's widow in her representative capacity in respect of debts incurred by C for his own benefit, and on his obtaining a decree, a part of the ancestral property was sold and purchased by D. E, F, survivors of C then sued D for possession—and it was held that the suit would lie, as D's title was bad, the property under Mitakshara law belonging not to C's widow, but to his survivors, in whom the said property vested on the death of C.—12 W. R. F. B. p. 1.

For possession of tenure.

(52). If a landlord ejects a ryot of his own authority, without the intervention of the Collector, the ryot can bring a suit under Section 15, XIV. 1859 (notwithstanding Clause 6, Section 23, X. 1859). If he sues in time he will recover possession without reference to the title of the landlord to eject him.—9 W. R. 513.

For *khass* possession of tenure.

(53). The purchaser of a tenure sold for arrears of rent under VIII. 1869 can sue for *khass* possession of the entire tenure, as it originally stood, although the sons of the defaulting tenant have been occupying huts on the land for more than 20 years.—8 W. R. 478.*

For refund of money paid out of Court.

(54). If A pays his judgment-creditor B out of Court, and B, instead of certifying payment to Court, executes decree against A, A can sue B for refund of money paid, *non obstante* Section 206, VIII. 1859.—13 W. R. F. B. p. 69.

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(55). If A requests B to pay money for him, there is an implied contract to re-pay the amount, and an action for the refund of the money will lie in a Small Cause Court, if its amount does not exceed 500 Rupees.—7 W. R. 386.

For refund of money paid for another.

(56). An under-tenant who has saved a superior tenure from sale, can sue in Civil Court for recovery of money paid, and is not limited to remedy provided by Clause 4, Section 13, VIII. 1819.—13 W.R. F.B. p. 1.

For refund of money paid to save tenure from from sale.

(57). An action will lie in the Civil Courts by a decree-holder against another decree-holder, in order to obtain a refund of money which has been paid to the latter, under an order in the execution department, in contravention of the provisions of Section 270 of Civil Procedure Code. It is for the Court to decide whether, having regard to all the equities between the parties, the plaintiff is entitled to recover.—9 W. R. 515.

For refund of money wrongly paid in execution department.

(58). A civil suit will lie to enforce registry of tenure by a landlord under Section 26, VIII. 1869.—12 W. R. F. B. p. 30.

For registry under Section 126, VIII. 1869.

(59). A devisee under a will can sue for rent due to devisor, even if he has not taken out a certificate.—6 W. R. Act X. Rulings 71.

For rent by a devisee.

(60). When the tenant is admittedly in possession of a tenure sold under Act X. 1859, and is the avowed defaulter, he cannot sue for reversal of sale; but, when a party alleges that he is the real tenant, and that the person against whom the rent suit was brought is not the tenant in possession, a suit will lie in Civil Court to set aside the sale alleged to have been procured by fraud, and to restrain purchasers from availing themselves of rights acquired by such sale.—7 W. R. p. 183.

For reversal of sales under VIII. 1869.

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(61). A tenant whose tenure has been sold under Rent Law can, even if he be party to the execution case in which the sale took place, sue, as against the purchaser, for a reversal of the sale, on the ground of fraud.—5 W. R. 21 Act X. Rulings.

(62). A suit will lie by an unregistered holder in a Civil Court to set aside a sale held under the Rent Law, after money due on decree had been deposited.—6 W. R. Act X. Rulings p. 59.

For reversal of sales in execution under VIII. 1859.

(63). A suit for cancelment of sale in execution of a decree will lie even against *bonâ fide* purchasers for valuable consideration, without notice. Such purchasers are not, in every case, protected from having the sale set aside under the present or former laws. The Courts must decide in each case, in accordance with the principles of justice, equity, and good conscience, whether the sale ought to be set aside or not.—9 W. R. p. 196.

(64). In a former suit by A against B and his daughter C, which was subsequently revived against C as the representative of her father B, possession was decreed against C in her representative capacity The decree-holder then sold C's private property in execution. C then brought a suit for the cancellation of the sale, and it was held that a suit would lie, and that C was not a party within scope of Section 11, XXIII. 1861.—11 W. R. F. B. 1.

For reversal of sale by Collector in partition proceedings.

(65). A partition was decreed by the Civil Court, and provisions made in the decree, for the payment of the expenses of partition by certain co-sharers indicated. On proceedings being taken before the Collector, in pursuance of the decree, that Officer called upon certain co-sharers (not being those specified in the decree) to pay the Ameen's fees

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remaining due, and, on failure by said co-sharers to comply with his order, the Collector put up their share for sale. The co-sharers then, instead of appealing, sued to set aside the sale and to recover the property, alleging that there was no arrear due, and that the provisions of the law did not apply to the case—held that the suit would lie.—10 W. R. F. B. p. 66.

For reversal of sales of ancestral property.

(66). In districts where Mitakshara law prevails, the father cannot alienate ancestral property without consent of his son, except for sufficient cause; and the son cannot only prohibit his father from doing so, but sue to set such sales or alienations aside.—8 W. R. p. 15.

To try title.

(67). A suit will lie to try, a title notwithstanding a summary order under XIX. 1841, intended only to affect the question of possession.—7 W. R. 199.

To prevent waste.

(68). A reversioner can, even during a Hindoo widow's life-time, sue to prevent waste, either by her or by others, of the ancestral property in which she has a life interest only.—W. R. 165.* *Vide* also Section 15.

Cause of action—suits which will not lie.

For cancelment of pottah.

(69). A suit will not lie for the cancelment of a pottah, not otherwise impugned, solely on the ground that rent has not been paid—such ground can only support a suit for arrears or for ejectment.—W. R. 34.*

For compensation.

(70). When a ferry, previously held under private management, has been declared to be a public ferry by the Government under Section 3, VI. 1819, an individual claiming compensation for the loss alleged to have been sustained by him, in consequence

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of the extension of the authority of Government, cannot maintain an action in the Civil Courts to enforce his claim.—7 W. R. 191.

(71). A suit will not lie by a farmer, without express authority from the zemindar, against a tenant, for damages caused by the cutting down of trees without leave or license.—S. C. C. R. p. 14.*

For damages.

(72). An action of damages will not lie, on the part of the present proprietor, for injury done to the land during the time of the former proprietor. If wrong was done, the right of action would have been with the former proprietor, and cannot be revived in the person of the new purchaser. Besides, the embankments, the construction of which is put forward in this case as the cause of damage, can hardly be termed encumbrances under Section 26 I. 1845.—W. R. 17.*

For specific damages.

(73). A ryot agreed, in a manner, with B, an indigo planter, to sow a certain quantity of land with indigo, or, if he did not, to pay damages at the rate of 10 Rupees a beegah—it was held that B could not sue the ryot for damages at 10 Rupees a beegah, as there was nothing to show that the parties intended that the sum mentioned should stand as a fixed measure of damages, behind which the Court could not look—in such a case the Court could only award such limited penalty as might appear to be proportioned to amount of injury sustained.—S. C. C. R. p. 1.*

For ejectment of Ghatwals.

(74). D, a zemindar, sued to eject as trespassers certain Ghatwals who held a service tenure in the Bhagulpore District under a valid sunnud granted to them more than a hundred years ago, by a person representing the then Government. The said service tenure had been allowed to change hands by descent and purchase, without question, and at the time when the

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zemindar A sued, the present Government, through the Collector, declined to waive their rights to the police service for the performance of which the tenure had originally been granted—held that the suit would not lie, and that D, the the zemindar, could not eject the Ghatwals, treating them as common trespassers.—6 W. R. 199.

For maintenance.

(75). Held that, by Hindoo Law in Lower Bengal, the widow of a person who has left no money or property cannot sue her father-in-law for a pecuniary allowance in lieu of maintenance, if she refuses to reside in her father-in-law's house as a member of his family.—10 W. R. F. B. 89.

To set aside order relating to nuisances.

(76). No suit will lie in a Civil Court to set aside an order duly made by Magistrate under Section 308 Chapter XXII. of the Code of Criminal Procedure, relating to nuisances, or to restrain him from carrying any such order into effect.—12 W. R. F. B. p. 18.

For possession of wife's person.

(77). A suit will not lie by a husband to recover possession of his wife's person; he can only sue for the restitution of conjugal rights, and for a decree declaratory of those rights, to be enforced, in case of disobedience, by the imprisonment of the wife or attachment of her property.—6 W. R. 105.*

Possession of ancestral property.

(78). A reversioner sued to have certain ancestral properties, conveyed by a Hindoo widow to B, delivered up to themselves or to the widow, on the ground that the conveyance had been made for causes other than those allowed by Hindoo Law—held that the suit would not lie, as the conveyance was binding during the widow's life-time. All that a reversioner can do under such circumstances is to sue for a declaration that the conveyance is not binding.—W. R. 165.*

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(79). Reversionary heirs cannot sue, after expiry of usual period of limitation, for possession of ancestral lands or property sold by a childless Hindoo widow to satisfy decrees, obtained against her as heiress and legal representative of her husband, without fraud or collusion.—9 W. R. 506.

(80). A sued and obtained a decree against B, a Hindoo widow, as guardian of her son C, and also in her own right, for recovery of a debt contracted jointly by her and her husband, father of C. In order to satisfy A's decree, B sold portion of her husband's estate to D—held that C could not sue the purchaser D, as the alienation made by B was a valid one, and could not be cancelled.—9 W. R. p. 316* (*a*).

For possession of buildings.

(81). A suit will not lie by the owner of the soil for the possession of buildings and other improvements on land in the Mofussil, simply on the ground of their accidental attachment to the soil. If the person who made the buildings or improvements was not a mere trespasser, but in possession under a *bonâ-fide* title or claim of title, he is entitled to remove the materials, or to obtain compensation for the value of buildings, at option of the owner.—6 W. R. p. 228.

For possession of tenure.

(82). A having a right of occupancy in a tenure sold it to B without consent of the landlord, who refused to acquiesce in the transfer.

The landlord sued A for arrears of rent and ejected him, on which B sued for possession of A's tenure, solely on the ground that it was transferable, because A the vendor had a right of occupancy —held that B's suit would not lie, as the tenure did not become transferable, solely because a ryot who had held it had gained a right of occupancy.—7 W. R. p. 528.

(*a*) Not exactly a Full Bench decision, but a ruling on appeal from a Division Bench, the Judges of which disagreed.

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(83). When a sale of ancestral property by a father has been cancelled under Mitakshara law, by the son, by means of a civil suit, the purchaser of such property cannot sue for refund of the purchase money from the son, unless he proves that the purchase money was carried to the assets of the joint estate, that the son had the benefit of his share of it, or that it was applied to freeing the ancestral estate from an encumbrance—in the latter case the purchaser would have the right to stand in the place of the encumbrancer.—9 W. R. p. 511.

For refund of purchase money.

(84). A landlord cannot sue for rent, in the same suit, both principal and agent; he must elect which of them he will proceed against.—8 W. R. p. 428.

For rent.

(85). A tenant, admittedly in possession and avowedly a defaulter, cannot, except on the ground of fraud, sue in a Civil Court, for reversal of a sale of a tenure under the rent laws.—7 W. R. p. 183 and W. R. p. 147.*

For reversal of sale of tenure.

(86). During the existence of a nearer heir a suit for succession by a more distant heir will not lie.—6 W. R. p. 2.*

For succession.

(87). A brought a suit in a Moonsiff's Court against B, alleging that B had sold him lands under deed of sale, and that B having made objections, the Registrar refused to register the deed; it was stated further that the suit was brought to set aside the fraudulent objections, and establish A's title as purchaser—held that the suit would not lie, as the unregistered the deed of sale by B to A could not be brought forward to prove the sale, and the sale could not be proved by any other evidence. A should have proceeded under Section 83 of Act X. 1866.—10 W. R. F. B. 51.

For establishment of title.

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Cause of Action—Suits which will not lie in Small Cause Courts.

(88). A suit for contribution will not lie in a Small Cause Court, as between judgment debtors, in the absence of any implied or avowed contract for contribution.—7 W. R. 384.

For contribution as between judgment debtors.

(89). A co-sharer in an estate paying revenue to Government, who has paid the revenue due upon the whole estate, cannot sue his co-sharers in a Small Cause Court, for contribution. The Small Cause Courts are bound to adjudicate according to the law which is administered in the other Courts in the Mofussil. No contract can be implied, on the part of the co-sharers of an estate, to contribute towards the payment of the Government revenue.—7 W. R. p. 377.

For contribution as between co-sharers.

Section 2.

Plea of res-judicata.

(90). The late Sudder Court affirmed two inconsistent findings at the same time, and the High Court was compelled to abide by the one which it approved, and to disregard the other.—5 W. R. p. 149. *

In the case of inconsistent decisions.

Plea of res-judicata when allowable.

(91). The purchaser at a sale of a talook, sold under a judgment upon a decree, sued to reverse the order of the Judge annulling the sale, and in the suit he craved confirmation of the sale, possession and mesne profits. This suit being dismissed on the merits, he instituted another suit in which he craved a certificate of sale—held that the second suit was brought for the same cause of action as the first, and that plaintiff

In a suit for certificate of sale.

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was precluded from maintaining it by the dismissal of the first.—W. R. 28.*

Plea of res-judicata when not allowable.

In suits for mesne profits.

(92). A sued B for possession and mesne profits, and his suit was dismissed. He appealed only as to possession, and the appeal was decreed, but mesne profits were not mentioned—held that A was not barred from suing for mesne profits, either by Section 2 or Section 7 of VIII. 1859, or by Section 2, XXIII. 1861.—13 W. R. F. B. p. 15.

In suits for rent.

(93). A landlord who has sued an agent for rent due from an estate, is not estopped from afterwards suing the principal for rent subsequently accrued due.—8 W. R. p. 428.

In suits for refund of excess payments of rent.

(94). A recovered from B, under the terms of his lease, a refund of the excess of rent paid by him in respect of the years 1861, 1862, 1863. While the suit was pending, B recovered from A at the same rate in respect of the three succeeding years—held that A was not estopped by Section 7 or 2, VIII., 1859, from bringing another suit against B for damages, in respect of the three succeeding years subsequent to the institution of abovementioned suit.—10 W. R. F. B. p. 41.*

In cases in which there is no concurrency of jurisdiction.

(95). In a former suit for rent brought before the Collector by A against B, B set up a bond authorizing B to deduct a certain portion of his rent, and apply it in reduction of the amount due to him on his bond. The Collector held that the bond was genuine; B then sued in the Civil Courts under the bond—held that the decision of the Collector was not conclusive except on the question relating to the rent. Concurrency of jurisdiction is a necessary

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condition of the rule creating estoppel in such a case.—8 W. R. 175.

When previous finding was ultra vires.

(96). Although a Division Bench of the High Court on appeal in 1863, gave its opinion on certain points in a previous suit between the same parties, the High Court on a subsequent appeal held that the parties were entitled to a fresh opinion on the same points, as they did not properly arise in the previous suit, which was founded on a different cause of action. The opinion then expressed was therefore ultra vires and did not conclude the parties.—8 W. R. 455.

Section 7.

Vide Section 2, rulings Nos. 92-4, 13 W. R. p. 51, and 10 W. R. p. 41.

Section 14.

Enquiry into question of jurisdiction when not barred.

Inquiry into question of jurisdiction.

(97). When a plaintiff sued in the District Court of B. for recovery of certain lands, and defendant pleaded that the lands were within another district—held that the Court in the absence of any decision on the point by a competent authority had power to investigate and decide under Section 14, VIII. 1859, whether the lands were in district B. The rejection of a plaint under the same section cannot give jurisdiction to a Court which does not possess it.—7 W. R. p. 200.

Not barred by a Magistrate's or Survey Superintendent's adjudication.

(98). Adjudication of the boundaries of two districts by the Magistrate or by a Superintendent of Survey, are not effectual settlements within previous of proviso of Section 14, VIII. 1859.—7 W. R. p. 200.

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Section 15.

Declaratory suits by reversioners.

(99). A reversioner can, during a Hindoo widow's lifetime, sue to obtain a declaration that a conveyance made by her is not binding.—W. R. p. 165.*

Suit to establish incorrectness of a boundary line.

(100). Held by a majority of the Court that under Section 15, VIII. 1859, a decree could issue merely declaring that a certain survey boundary line laid down by Government in an arbitrary manner, and in violation of provisions of Regulation X. 1822, and IX. 1825 was not the correct boundary line, and that such a decree could issue, even though plaintiff did not prove his title to lands up to the other and further boundary claimed by him.— 9 W. R. 426.*

Declaratory orders only issuable when asked for.

(101). According to Section 15, VIII. 1859, declaratory orders can be issued only in suits brought to obtain them.—6 W. R. 1.*

Declaratory decrees in enhancement suits.

(102). In a suit to recover arrears of rent at enhanced rates, when liability to enhancement has been fully tried, a decree can issue, declaring a tenure liable to enhancement, although notice of enhancement has not been proved.—W. R. 115.*

CHAPTER II., SECTION 24.

Section 24 not applicable to verifications by agents.

(103). *Semble* that a plaintiff cannot be punished for false verification in respect of a plaint verified by his agent.—W. R. 24.*

Verifications when not false.

(104). The verification is not false, when the plaintiff does not allege what is false, but attempts to do what the law estops plaintiff from

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doing, and plaintiff cannot be punished under Section 24, VIII. 1859.—W. R. 41.*

(105). *Semble* that a plaintiff is not necessarily guilty of fraud, when he omits to state that he had formerly sued for portion of rent sued for, but had failed to obtain a decree through want of evidence.—W. R. 24.*

CHAPTER III.

Rulings illustrating generally the subject of the chapter.

(106). In a suit for enhancement, if the land is held to be rent free, the claim of plaintiff must be dismissed, as the validity or otherwise of the rent free tenure cannot be tried in the same suit.— W. R. 115.

Case in which suit for enhancement must be dismissed.

Cases in which variance is fatal to plaintiff.

(107). A distinct suit for recognition of an adoption having failed, the plaintiff is not entitled to fall back on his right by descent, his suit must be dismissed.—W. R. 4.*

In suits for recognition of adoption.

(108). In a suit to contest enhancement on the allegation of holding under an istimrari pottah, if the plaintiff fail to prove such a holding, the Court need not inquire whether the ground of enhancement exists, or whether the enhancement is fair, but should dismiss the suit.—W. R. 59.*

In suits to contest enhancement.

(109). When a landlord sues for a kabuliyut at a given rate of rent and the Court finds that that rate is not right and equitable, the plaintiff is not entitled to a decree at a lower rate, but his suit should be dismissed.—10 W. R. F. B. 14.

In suits for a kabuliyut.

(110). The plaintiff, having sued upon a kabuliyut, and failed to prove it, is not entitled to a decree, even if he proves that defendants

In suits on a kabuliyut.

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have paid him rent for a number of years; his case must stand or fall by the kabuliyut.—W. R. 23.*

In suits for immediate possession by setting aside adoption.

(111). In a suit brought, on the ground of an existing right of inheritance, for immediate possession and mesne profits, by setting aside an adoption, the Court should not allow the form of action to be changed, and proceed to decide whether (the claim for possession being abandoned) a declaratory order may issue for setting aside the adoption—it should at once dismiss the suit.—6 W. R. p. 1.*

Cases in which variance is not fatal to plaintiff.

In suits for damages.

(112). A plaintiff having in his plaint alleged plunder by defendant, when there was no plunder in the strict sense of the word, it was held that his suit should not be dismissed, because, in describing the cause of action, strictly accurate language had not been used. A plaint should not be construed literally, but according to the plaintiff's real meaning, unless such meaning is inconsistent with the words used in the plaint so as to deceive the defendant and prejudice his defence.—W. R. 159.*

In suits for money advanced and partnership, half profits.

(113). In a suit for money advanced, and for half profits upon an alleged partnership, the plaintiff did not prove, or abandoned his claim to half profits—held that there had not been such an amount of variance as would justify, on that ground only, the dimissal of the claim for the balance of money advanced.—1 W. R. 300.*

Cases in which variance is not fatal to defendant.

In enhancement suits.

(114). If a ryot sets up a Mokurruree Pottah, in answer to a landlord's claim to enhance, and fails to prove it, or it is held to be forged, the landlord is not, *ipso facto*, entitled to a decree for

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the full amount claimed, but only to a fair and equitable rate, having regard to the grounds of enhancement.—6 W. R. 70, Act X. Rulings.

Section 28.

Verification of plaint.

(115). A Court ought not to allow any other person than the plaintiff to verify a plaint, except only (under Section 28, VIII. 1859) when plaintiff is unable, owing to absence or other cause, to subscribe it. When the plaint is not presented by plaintiff in person, the Court should be satisfied that the verification is actually signed by him.—W. R. 54.*

Section 29.

Amendment of plaint when advisable.

(116). A plaint which seeks to open up matters already adjudicated upon, should not be rejected under Section 29 but should be amended by striking out such matters.—W. R. 41.*

Amendment of plaint when allowable.

(116A). If in a suit for a kabuliyut the plaint discloses no date for the commencement of the kabuliyut, the plaint does not disclose a sufficient cause of action, and ought to be returned. The Court may, however, supply the omission by specifying in its decision the time from which the kabuliyut ought to run.—10 W. R. F. B. p. 14.

Amendment of plaint when not allowable.

(117). The power of the Lower Court to amend a plaint extends to the elucidation, by a *vivâ voce* examination of what is ambiguous in the claims of the contending parties, to the amendment of what is erroneous, and the supplying of what is defective, but not to the conversion of a suit of one character into another of a different character; *e. g.*, of a suit for possession with mesne profits into a suit for resumption.—6 W. R. p. 211.*

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(118). There should be great discretion and caution used in exercising the power of rejecting plaints for prolixity.—W. R. 44.*

Necessity of caution in rejection of plaints.

(118A). A plaint should be rejected when brought against several defendants for causes of action which have accrued against each of them separately, and in which they are not jointly concerned.—8 W. R. p. 15.

Rejection of plaint for misjoinder.

Section 39.

(119). Under Section 39, all documents must be received, however numerous; but they can be subsequently rejected under Section 129, if irrelevant or inadmissible.—W. R. 44.*

Reception and rejection of documents.

Section 73.

(120). Under Section 73, VIII. 1859, a Civil Court has no power to order the name of a third party, an alleged purchaser under another decree of the rights of plaintiff in the suit, to be substituted for that of the plaintiff, and upon the application of a party so substituted to allow the suit to be withdrawn.—9 W. R. 309.*

Section 73 when not applicable.

Section 81.

(121). Plaintiff, before judgment, had attached defendant's property under Section 81, VIII. 1859. His suit having been dismissed by the High Court, he applied to continue the attachment pending an appeal to Privy Council—held that such an attachment could not be continued, nor could High Court call upon defendant to give security for value of property attached.—12 W. R. F. B. 16.

Continuation of attachment before judgment refused.

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Section 93.

(122). The High Court declined to issue, pending an appeal to the Privy Council, an injunction staying the removal of a minor by the Board of Revenue to the Calcutta Wards Institution, holding that it had no power to make such an order, or to prevent the Court of Wards taking a minor under their protection, merely because a certificate had been granted to others under XL. 1853.—1 W. R. Misc. 7 and 3 W. R. 83.*

Injunction on Court of Wards refused.

Section 114.

(124). When a plaintiff fails to appear before a Commissioner appointed under Section 180, VIII. 1859, and the defendant appears, the plaintiff is liable to have his suit dismissed under Section 114.—W. R. 1.*

Effect of non-appearance before Commissioner.

Section 119.

(125). Process of execution is executed within meaning of Section 119, VIII. 1859, when an attachment of property takes place. If a party means to contest the validity of the decree, on the ground that he had no notice of the summons, he must come in within 30 days from date of attachment, and not within 30 days from the time when property is actually sold.—9 W. R. 236.

Limitation under Section 119 runs from date of attachment.

Section 129.

Vide Section 39.

Section 132.

(126). Exhibits produced in Court ought to be endorsed with name of person who produced them; as required by Section 132, VIII. 1859.—6 W. R. p. 2.*

Section 138.

(126A). Under Section 138 the Court is bound to send for a record on a proper application being made, and has no

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discretion in the matter.—W. R. 177.*—*Vide* however *per contra* 7 W. R. 109, where it is held that Court has discretion.

Section 167.

Effect of non-attendance of privileged persons.

(127). A Rajah, plaintiff, alleged that B, defendant, had forged his name to a deed, but declined to appear when summoned, on the ground that he was privileged from appearing in a Civil Court. The Court discredited the imputation made against B and dismissed the suit, holding that persons who avail themselves of such a privilege must take the consequences if their witnesses are not believed.—W. R. 54.*

Section 172.

Court not bound to examine witnesses merely because they are present.

(128). A Court is not bound to examine a witness simply because he is present, and is at liberty, if so advised, to discharge him. No appeal on the ground of a witness being so discharged will be admissible, unless it is shown that party producing witness stated that the witness was material or insisted on examining him. In such cases an application should be made, and if unsuccessful, it may be made a ground of appeal.—W. R. 177.*

Section 180.

(129). Where a plaintiff fails to appear before a Commissioner appointed under Section 180, VIII. 1859, he is liable to have his suit dismissed under Section 114, with costs.—W. R. 1.*

(130). In a suit brought to contest enhancement, the Judge is not bound to order a local inquiry, merely because he has incidentally stated such an inquiry to be the best source from which to obtain reliable evidence—nor will a special appeal lie on the subject of a Judge exercising his discretion and not ordering a local inquiry.—W. R. 19.*

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(131). In a former suit the ryot failed to set aside a notice of enhancement, it being held that the productive power of the land had increased, but it was left to a future suit to decide what those rates must be. This suit having been brought, and the plaintiff adducing no further evidence, the suit was dismissed—held that the Lower Court was not bound of its own motion to order a local inquiry.—3 W. R. Act X. Rulings 153.

Court not bound to order local inquiry.

Section 187.

An appeal will lie upon a question of costs.—6 W. R. p. 187.

Section 188.

(132). When a plaintiff has asked for a sum, which is in excess of what the Court holds him entitled to, and to which a lower rate of pleader's fees or of stamps applies than to rest of claim, the defendant, who succeeds in that part of the case, is entitled to recover the costs applicable to that particular part of the subject matter of suit.—7 W. R. p. 127.*

Apportionment of costs.

Section 196.

(133). A decree of the High Court, technically for possession only, which reinstates a party in the possession he was in, when ousted, also gives a right to mesne profits to be ascertained in execution.—9 W. R. 407 (*a*).

Mesne profits when ascertainable in execution.

(134). A, a Mohammedan widow, was from 1845 to 1863 in possession of her husband's estate in lieu of dower. Her mother-in-law D then sued and got a decree for one-sixth of the estate (being her share) and mesne profits for six years. A then sued D

Case in which mesne profits were not allowed.

(*a*) It is doubtful whether this is a Full Bench ruling or an *obiter dictum*. *Vide* 10 W. R. p. 131.

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for one-sixth of her dower without interest—and it was held that she ought to recover without deduction of mesne profits realized by her during her possession, previous to the six years for which D had already obtained a decree for mesne profits.—9 W. R. 318* (*a*).

Section 197.

(135). When a party is declared entitled to a decree for mesne profits, he is entitled to recover all such sums as may have been collected and appropriated by others in wrongful possession, or such sums as he would have collected, had he been in possession, but was prevented from collecting by having been wrongfully kept out of his property.—W. R. 40.*

Definition of mesne profits.

(136). The proper principle applicable; to a case, in which the person, liable to pay mesne profits, has not let the lands to tenants, (but has himself occupied, and cultivated it with indigo and other speculative crops) is, not to assess mesne profits according to the value of such crops, but according to what would have been a fair and reasonable rent for the land, if the same had been let to a tenant during the period of unlawful occupation.—9 W. R. p. 445.

Mode of deciding amount of mesne profits in cases in which land has not been let.

Chapter IV.

Rulings relating to execution generally.

(137). One of several judgment debtors who purchases a decree against himself and his co-debtors cannot issue execution against his co-debtors and recover from them the whole amount of the common debt. His only remedy is to sue them for contribution and make them pay him their shares of the amount for which the decree was purchased.—9 W. R. 230.

Purchase of decree cannot execute it against his co-debtors.

(*a*) Not exactly a Full Bench decision, but a ruling on appeal from a Division Bench.

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(138). A decree holder cannot first sell a decree, and then issue out execution upon it.—3 W. R. 90.

Vendor of a decree cannot execute it.

(139). The judgment debtor, in consideration of time being allowed him, promised in open Court, through his pleader, to pay interest, although the decree did not award interest—held that the debtor was bound by that promise, and that execution could issue, as well for the interest promised as for the sum decreed.—5 W. R. Misc. Rulings p. 1.*

Interest sometimes awardable in execution although not included in decree.

Section 200.

(140). Purdanishin women who, according to the custom of the country, ought not to be compelled to appear in public, are not exempt from arrest in execution of decree.—10 W. R. F. B. 21.

Purdanishin women are liable to arrest.

(141). If a husband get a decree for restitution of conjugal rights against his wife, she cannot be delivered over to him; the Court will merely order her to return to her husband, and, if she decline to do so, she can be punished both by imprisonment and by attachment of property under Section 200.—6 W. R. 105.*

Execution of decree for restitution of conjugal rights.

Section 206.

(142). If A pays his judgment creditor B out of Court, and B nevertheless executes his decree, A is not barred by Section 206 from suing A for refund of money paid.—13 W. R. F. B. 69.

Civil suit not barred by Section 206.

Section 209.

(143). The purchaser of a decree held by A, against whom B holds a cross decree, takes it subject to a set off, on account of B's decree.—10 W. R. F. B. 32.

Purchased decree is subject to set off.

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(144). Cross decrees in the same Court may be set off one against the other, whether they were originally decrees of the same Court or are sent to the same Court to be executed. But decrees of different Courts cannot be set off one against the other, except when they are both in the same Court for purposes of execution.—6 W. R. Misc. Rulings 72.

Cross decree of different Courts can only be set off when being both executed in the same Court.

Section 223.

(145). As to execution of simple money decrees against property pledged—*Vide* Section 232.

(146.) A person who, at a sale in execution of a decree, has purchased the share of a member of a joint Hindoo family, and subsequently sued for and obtained possession of such share in the property, consisting of the joint family dwelling-house and land, in execution of the decree, is entitled to be put in possession of a portion of the dwelling-house.—2 W. R. Misc. Rulings 30.*

Decree-holder may be put in possession of portion of dwelling-house.

Section 230.

(147). When an application is made under Section 230, VIII. 1859, the Court can go into the title of the applicant as well as into the question of possession. Applicant, if he chooses, can rest his title solely on possession and not prove title. Again decree-holder, if he chooses, can prove title. In short the litigation between decree-holder and applicant must be treated as an ordinary civil suit.—13 W. R. F. B. p. 80.

Mode of disposing of an application under Section 230.

(148). When a party has been dispossessed under a decree obtained in a suit under Section 15, XIV. 1859, he need not bring a regular suit on proper stamp to regain possession, but may apply under Section 230, VIII. 1859.—12 W. R. F. B. 25.

Section 230 applies to decrees under Section 15, XIV. 1859.

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Section 232.

(149). When a person to whom property is pledged for a debt, obtains a simple money decree against his debtor, he cannot execute it against the property pledged to the prejudice of a subsequent *bonâ fide* purchaser. He may enforce his lien by separate action against the property in possession of the subsequent purchaser.—1 W. R. 315.

Execution by holder of simple money decree.

(150). Section 270 only applies to attachments after judgment. A judgment creditor who has attached property before judgment, must re-attach it after judgment before he can proceed against it in execution.—13 W. R. F. B. 9.

Necessity of a second attachment.

Section 237.

(151). There is no appeal against an order of distribution, under this Section, of funds attached by rival decreeholders.—9 W. R. 223.

No appeal against an order under Section 237.

Section 240.

(152). Held that a private *bonâ fide* alienation of property, during the continuance of an attachment, is null and void only as respects the attaching creditor, and those who claim under or through the attachment. —11 W. R. Appeals from Original Jurisdiction p. 1.

Alienation during attachment is void only as against attaching creditor.

Section 243.

(153). An appeal lies against an order under this Section.—10 W. R. F. B. 5.

Section 246.

(154). A claim was made under Section 246 of VIII. 1859, (by a third party) to timber attached under Section 234—held that the claimant must begin, and that the

Procedure in claims under Section 246, VIII. 1859.

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onus is on him to prove that the goods attached were his property, or in his possession, and not in that of judgment debtor. This evidence must be confined to proving his own claim; he cannot be allowed to show a title in a third party, with whom he has no connection.—11 W. R. F. B. 8.

Claim to a share of an estate must be investigated under Section 246.

(155). B, in execution of a decree, attaches an eight anna share of A in estate C, and D comes forward and says that A's share is not eight annas but two annas, and that he (D) owns four annas—held that the claim must be investigated under Section 246, VIII. 1859, and D's four annas released from attachment, if he proves his right to it.—13 W. R. F. B. 63.

Section 248.

Jagheers held under Section 34 of XII. 1805 cannot be sold in execution.

(156). The rights and interests of a judgment debtor in a Jagheer granted under Section 34, Regulation XII. 1805, cannot be sold in execution of decree. The Court should sequestrate the property and make the preceeds available during the life of the debtor for payment of money decreed.—W. R. 85.*

Section 249.

Proper construction of proclamation of sales.

(157). A suit was brought against A's widow upon a bond given by A. In execution of the decree obtained against the widow, A's property was put up and sold. The proclamation of sale, in one place, described the property sold as the property of the widow, and, in another, as the rights and interest of the debtor—held that what was intended to be sold, was the right and interest, not of the widow, but of the widow as A's representative.—W. R. 119.*

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Section 256.

Case in which Section 256 does not apply to third parties.

(158). A being mortgagee of two estates, M and P obtained a decree under which both were attached and lotted for sale; P to be sold first and M afterwards. On the application of the judgment debtor, the subordinate Judge sold M first and P afterwards. After the sale, a person who claimed under a conveyance, by owner, subject to A's mortgage, applied to set aside the sale as irregular—held that he could not come in under Section 256, VIII. 1859.—2 W. R. Misc. Rulings p. 13.* *Quære*, has he a remedy under Section 269, VIII. 1859?

What the Court can and what it cannot decide in an appeal under under Section 256.

(159). All a Court can decide in an appeal under Section 256, is that the sale ought or ought not to be reversed, so as to deprive the judgment creditor, or otherwise, of the benefit of the monies realized by the sale. The Court cannot decide in such an appeal whether the sale is to be reversed so as to deprive the purchaser, under the execution, of the benefit which he has derived from his purchase.—9 W. R. 230.

Sections 259-260.

Effect of Section 260 in a suit by a certified purchaser not in possession.

(160). A defendant in possession is estopped not only by Section 260 of VIII. 1859, but by the general provisions of the Act, from pleading that the plaintiff, a certified purchaser of property sold in execution, purchased, not on his own behalf but *benamee* for defendant.—11 W. R. F. B. 16.

Section 270.

Application of Section 270.

(161). Section 270 only applies to attachments after judgment and not to attachments before judgment.—13 W. R. F. B. p. 9. *Vide* Section 232

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No appeal under Section 270.

(162). No appeal lies under this Section even when proceeds have been paid to wrong party.—W. R. 180.*

No appeal notwithstanding Section 11, XXIII. 1816.

(163). There is no appeal under 11, XXIII. 1861, from an order given under Section 270.—W. R. 116.

Section 282.

Liability of property of judgment debtor after imprisonment.

(164). After a debtor has been arrested in execution of a decree exceeding 100 Rupees, and been discharged at the request of the creditor, after an imprisonment of less than six months, such debtor's personal property may be taken in execution under the same decree.—9 W. R. p. 178.

Section 286.

Jurisdiction in cases of transmitted decrees.

For jurisdiction in cases of transmitted decrees, *vide* Section 1—Jurisdiction.

Transmission of Small Cause Court decrees.

(165). Notwithstanding Sections 19 and 20, Act XI. of 1865, the provisions of Section 286, VIII. 1859, apply to Small Cause Courts. A decree of a Small Cause Court may be sent to another Court for execution, if no property is found within the jurisdiction of the Court passing the decree. If the Court, to which the decree is sent, be in another district, the decree must be sent to the principal Court of original jurisdiction in that district.—9 W. R. p. 175.

CHAPTER VI., SECTION 327.

No appeal under Section 327.

(166). No appeal lies from an order rejecting an application for filing an award, even although the order awards costs.—6 W. R. Misc. Rulings p. 83.

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Chapter VIII.

Rulings which relate to appeal generally.

Appeal cannot be rejected as out of time after registration.

(167). An Appellate Court after registering an appeal and serving notice on the opposite party has no power at the hearing to reject the appeal on the ground that it was not preferred within the prescribed period.—8 W. R. 141* (*a*).

Date from which period of appeal runs.

(168). The time for filing an appeal runs from the original judgment, and not from the decision on a petition of review thereof; such time will not be extended without good cause being shown, and the fact of the time for appeal having expired pending a petition of review is not a good cause for extension of time.—2 W. R. Misc. p. 35.

Period of appeal how affected by Sundays and holidays.

(169). When the last day for filing an appeal or review falls on a Sunday or holiday, whether that holiday consist of a single day or several days, the appeal or review may be filed on the day after.—12 W. R. F. B. p. 21.

Orders from which an appeal lies.

Orders about costs.

(170). An appeal will lie upon a question of costs, although any interference with the orders of the Lower Court, as to costs, ought to be exercised with discretion.—6 W. R. 187.

Order for postponement of sale.

(171). An appeal lies from an order passed under Section 243, VIII. 1859, postponing the sale of the property attached, in order to enable the judgment debtor to raise the amount of the decree against him.—10 W. R. F. B. 5.

(*a*) The authority of this ruling has been recently very much shaken by the decision of a Division Bench, reported in 13 W. R. p. 351.

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(172). An appeal lies from an order, under Section 377, VIII. 1859, deciding what is just and reasonable cause for admitting a review after ninety days have elapsed, although there is no appeal against an order, under Section 378, granting or refusing a review.—9 W. R. 181.

Order under Section 377, VIII. 1859.

Orders and judgments from which an appeal does not lie.

173. When a plaintiff's suit has been dismissed under Section 116, for non-attendance before Commissioner appointed under Section 180, VIII. 1859, an appeal does not lie from such judgment. The proper course is to apply for an order to set aside the judgment, and if that application is refused, to appeal against the order of refusal.—W. R. 1.*

Orders under Sec. 114 and Section 180 of VIII. 1859.

(174). B. C. D., attached under Section 237, funds belonging to A, their common judgment debtor, and each asked to have his decree first satisfied. The Lower Court declined to do so and ordered that B. C. D. do each recover, rateably, a part of the funds in question—held that B. C. D. had no right of appeal as against each other or even as against the judgment debtor.—9 W. R. p. 223.

Order of distribution under Section 237.

(175). No appeal will lie for a refund of the proceeds of sale realized in execution of a decree, paid to a wrong party, by order of a competent Court, under Section 270, VIII. 1859.—W. R. 180.*

Wrong order under Section 270.

(176). No appeal lies from an order of the Lower Court, rejecting an application for filing an award under Section 327, VIII. 1859, even when the order awards costs.—6 W. R. Misc. Rulings p. 83.

Order under Section 327, VIII. 1859.

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(177). No appeal lies against an order rejecting an application for the re-admission of an appeal under Section 347, VIII. 1859.—10 W. R. p. 39.

Orders under Section 347, VIII. 1859.

Section 338.

(178). A party wishing to stay execution under Section 338, VIII. 1859, pending appeal, is bound to show sufficient cause to the Court for staying it, and the rule is equally applicable, not only to decrees for immoveable property, but also to simple money decrees.—9 W. R. p. 448.

Necessity of showing sufficient cause.

(179). In a suit in which an appeal to the Privy Council from a decree of the High Court has been admitted, and is still pending, the Court of original jurisdiction has power to issue execution. But such Court, if it has notice of the appeal to Privy Council, should stay its hand until the parties have had an opportunity of applying to High Court under Section 4, XVII. 1797.—6 W. R. Misc. 84.

Course to be pursued by Lower Court pending appeal to Privy Council.

Section 348.

(180). *Pro forma* defendants, by making the real defendants, who did not appear, respondents between themselves, cannot open out that portion of the case, which as between the plaintiff and the non-appealing defendants, has not been appealed against.—2 W. R. 227.*

(181). When a Court under Section 33 returns a plaint for presentation to a proper Court, and such an order is appealed against by the plaintiff, defendant, respondent, cannot be heard under the provisions of Section 348, VIII. 1859.—W. R. 87.*

Defendant cannot be heard under Sec. 348 in support of order returning plaint.

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Power to file notice of objection under Sec. 348.

(182). A respondent may file with the Registrar, before hearing of appeal, a notice of the objections he intends to take, under Section 348 of Court Procedure, at the hearing.—6 W. R. Misc. 102.

Chapter X.

Power of High Court to extend time for special appeal.

(183). The High Court have the power of extending the time for the presentation of an application for the admission of a special appeal.—W. R. 146.

Cases in which a special appeal will lie.

When Judge deals improperly with legal presumptions.

(184). A special appeal will lie when a Judge, in deciding upon the facts, deals improperly with the presumptions which the law would raise; for in so doing, the Judge has committed an error in law.—9 W. R. p. 338.*

Or decides without legal evidence.

(185). A special appeal will also lie when a Judge decides without legal evidence; as he thereby commits an error in law.—9 W. R. p. 338.*

And in orders relating to execution.

(186). A special appeal lies under Section 11, XXIII. 1861, from a decision passed in appeal from an order relating to the execution of a decree.—W. R. 83.

On ultimate decision against order of remand.

(187). The order of a Judge over-ruling the defence of limitation, and remanding the suit for trial on the merits, if not appealed against as a decree, may be objected to on special appeal, when ultimate decision is arrived at.—1 W. R. 51.*

On points of jurisdiction not taken below.

(189). The High Court will receive and adjudicate on special appeal upon points of jurisdiction, not taken below, because, as acts

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done without jurisdiction are acts of no legal effect at all, they must be set aside.—W. R. p. 15.*

Cases in which a special appeal will not lie.

From decision under Sec. 347, VIII. 1859.

(190). No special appeal lies under Section 11, XXIII. 1861, from a decision rejecting an application for the re-admission of an appeal under Section 347, VIII. 1859.—10 W. R. F. B. 39.

On question of jurisdiction not determined by Lower Court or admitted by both parties.

(191). A special appeal will not lie upon a question of jurisdiction depending upon a fact not determined by the Lower Court or admitted by both parties. *Quære*, would it lie, even if the Lower Court had no jurisdiction, unless the error in procedure affected the merits?—W. R. 31.*

Or owing to mistake not affecting merits.

(192). The High Court will not interfere on special appeal with a decree, involving a mistake as to the applicability of a law, when such mistake does not affect merits and decision of the case.—W. R. 16.*

Against refusal to order local enquiry.

(193). No special appeal will lie when the Lower Court in the exercise of its discretion declines to order a local enquiry under Section 180.—W. R. 19.*

Against order discharging witnesses.

(194). No special appeal will lie, merely on the ground that the Lower Court discharged witnesses when present, when plaintiff nowhere stated that the witnesses discharged were material, or insisted on examining them—if they were material, the plaintiff ought to have made an application, and if unsuccessful made it the ground of appeal.—W. R. 177.*

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Because Judge wrongly dismissed an appeal on merits.

(195). In the absence of any statement that the case had been decided *ex-parte*, by the Deputy Collector, for default of the defendant's appearance, the Judge dismissed an appeal brought by defendants on the merits—held that no special appeal would lie on the ground that the Judge should have dismissed the appeal without going into the merits.—W. R. 46.*

Chapter XI.

Rulings illustrating generally the subject of review.

Term of application for review how affected by Sundays and Holidays.

Vide Chapter VIII., third general ruling.

Transmission to Privy Council of applications for review.

(196). Held that in a case where an appeal to the Privy Council has been admitted against a regular decree made on appeal, applications for review and orders thereon, ought not to form part of the records to be transmitted to England.—10 W. R. F. B. p. 1.

Court is bound to dispose of application for review when no appeal has been filed.

(197). If a review of judgment is applied for in proper time, before an appeal is preferred, the Court has full power, and is bound to dispose of an application for review. *Quære* whether a review of a judgment can be admitted by a Lower Court after an appeal has been preferred therefrom.—5 W. R. 59.

A second application for review is admissible.

(198). An order rejecting or admitting a review is not final, but the Court may, in the exercise of its discretion, admit a second review even after a prior order rejecting it.—5 W. R. 93.

Applications for review are re-admissible after dismissal for default.

(199). Applications for review, dismissed for mere default, may be re-admitted in the same manner as appeals dismissed for default.—5 W. R. 93.

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(200). Under Act VIII. 1859 a Judge has power to review an order passed by him in execution of decree.—W. R. 66.*

Review of an order in execution is admissible.

Section 377.

(201). The order of a Lower Appellate Court reviewing a judgment after the expiration of ninety days from date of decree, without shewing whether there was sufficient cause for the delay, was held to be illegal, and was set aside with the subsequent proceedings thereupon.—8 W. R. 184*

An order admitting review after ninety days without sufficient cause can be set aside.

(202). There is an appeal against an order under Section 377, deciding what is just and reasonable cause for admitting a review after ninety days, although there is no appeal against an order under Section 398, whether granting or refusing a review.—9 W. R. 181.

An appeal lies against order admitting review under Section 377, but there is no appeal against order under Section 378.

Section 378.

(203). This section does not apply to applications for revival of suit under Section 2, LIII. 1860.—W. R. 11.*

Section 378 not applicable to petitions for revival under Section 2, LIII. 1860.

CRIMINAL PROCEDURE CODE.

(204). A Civil Court has power to send a case for investigation under Section 171 of Criminal Procedure Code, even when no particular person has as yet been accused.—W. R. 71.*

Criminal inquiry can be directed under Section 171, Criminal Procedure Code, even when no one is accused.

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ESTOPPEL.

Cases in which estoppel can be pleaded (*a*).

As between auction-purchasers at Government sales and Talookdars.

(205). Held by the majority of the Court that Government, as auction-purchaser of the proprietary rights of a pergunnah, having waived all right to cancel the tenures of the dependent Talookdars (and having admitted them to settlement and otherwise recognized their rights), the zemindar, purchaser of those rights from Government, could not put in force against the Talookdars any rights which his vendor had waived.—4 W. R. Act X. Rulings 6.*

As between Ghatwal's heirs and lessees.

(206). A Ghatwal granted a mokurruree lease to A; after A and his lessors had been in possession for sixty years, a manager, appointed by the Court of Wards for the estate of the minor heir of A's lessor, summarily ejected the person in possession under the lease—held that, although Ghatwals have no power of alienation, still, as they have a perpetual estate so long as the services of the tenures are rendered, the Ghatwal's minor heir, and consequently the manager, is estopped from treating the leases granted to A as a nullity, and ejecting the lessee without legal process. He may, if so advised, question by a regular suit the title of the lessee.—W. R. p. 34.*

As between landlords and tenants.

(207). The receipt of rent for ten years by a zemindar, without making any demand for interest, and without applying any portion of the rent payments towards the discharge of interest, was held to justify the Lower Court's finding to the effect, that plaintiff had waived his claim to interest, and was therefore estopped from demanding it.—W. R. 117.*

(*a*) The doctrine of "res-judicata" is illustrated by the precedents quoted under Section 2 of Court Procedure Code.

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(208). The receipt of rent for 1268 by landlord, bars his right to eject a tenant for non-receipt of rent, due up to end of 1267; the receipt of rent has the same effect as if the landlord had, at commencement of 1268, created a new tenancy. —W. R. 10.*

As between zemindars and Government farmers.

(209). A zemindar whose estate has been under khass or Government management, is estopped from pleading that the Government farmer should not have accepted the surrender of a lease or assented to the division of one holding into several. The Government farmer, being the person entitled to the rents, was quite competent to accept surrender of, and assent to, divisions of holdings.—2 W. R. Act X. Rulings p. 25.*

Cases in which estoppel cannot be pleaded.

As against all men on the strength of judgments *in rem*.

(210). In India judgments *in rem* are not binding against all; *i. e.*, strangers (not parties to the suit or privies) are not bound by the decision of a Court that a Hindoo family is joint or undivided or upon a question of adoption, legitimacy, partibility of property, rule of succession, or any other question of the same sort; in short, judgments *in rem* do not in India work estoppel against all.—7 W. R. 338.

As against the Court of Wards.

(211). The mere granting of a certificate by a Civil Court under XL. 1858 does not estop the Court of Wards from taking a minor under their protection, when such minor is by law subject to their authority.—1 W. R. Misc. Rulings 7;* 3 W. R. 83.

Between landlord and tenant.

(212). Both parties stipulated for payment of rent on certain dates, and, if not so paid, for a certain rate of interest until so paid—held that the landlord was not estopped from claiming interest, because he omitted to claim interest, instalment by instal-

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ment, for the fractional time during which the rent was not paid after it became due.—W. R. 13.*

Between unregistered mortgagees and subsequent purchasers registered under XIX. 1843.

(213). A prior unregistered mortgagee is not estopped from establishing his lien as against a subsequent purchaser without notice, registered under XIX. 1843, by the mere fact that he did not give notice. If the subsequent purchaser proves that he purchased *bonâ fide* without notice, the onus probandi will be on the unregistered mortgagee to prove the *bonâ fide* nature of his mortgage and its priority to defendant's purchase.—5 W. R. 61.

Between purchasers of estate at Government sales and alienees of former owner.

(214). A purchaser at a sale for arrears of revenue, suing to establish a right to chur lands, which have accreted to the purchased estate, is not bound by an agreement, entered into with former owner, amounting to alienation of half the chur lands in favor of an adjoining proprietor; such an agreement is an alienation of, or encumbrance of the purchased estate, void under Section 26, I. 1845, as against the auction-purchaser.—*Semble* that purchasers, under any of the sale laws since XIII. 1841, may be bound by a decree in a boundary suit against the former owner.—2 W. R. 191.

Between tenants and landlords.

(215). A ryot is not estopped from enjoying the benefit of having held at a uniform rate since time of permanent settlement, merely by reason of his having stated that he held under a pottah, not inconsistent with such presumption, which pottah he has failed to prove.—6 W. R. Act X. Rulings p. 57.

EVIDENCE.

Value of Ameen's report as evidence.

(216). The report of an Ameen is, generally speaking, of no value in clearing up difficulties and determining questions connected with possession of lands in past time.—W. R. 39.*

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Proper mode of treating written statements when in evidence.

A written statement put in by defendant must, when treated as evidence, be considered as a whole, and not looked upon as a plea in confession and avoidance.—9 W. R. 190.

Evidence not admissible against third parties.

Judgments *in rem*.

(217). A judgment *in rem, e. g.*, that a Hindoo family is joint and undivided, or upon a question of legitimacy, partibility of property, rule of descent in any particular family, is only evidence against parties to the suit in which the judgment is pronounced or their privies—such a judgment is not admissible against third parties.—7 W. R. 338 (*a*).

Judgment declaring a pottah to be forged.

(218). A judgment against one sharer in a mokurruree pottah, declaring the Pottah to be a forgery, is not a judgment *in rem*, and, at any rate, is not admissible as evidence against another sharer (not a party to the suit) suing to obtain possession, and declaration of his right under the pottah.—7 W. R. 347.

Conveyances when merely produced and not proved.

(219). A conveyance, not proved but merely produced, is not admissible to show, as against third parties, that the person producing the conveyance has obtained it from the person to whom the property is thereby conveyed; more especially when that person has not been in possession of the property.—W. R. 20*.

Statements by former owners.

(220). A statement made by a former owner, that he had conveyed to particular person, cannot be admitted as evidence against third parties.—W. R. 20*.

Unregistered documents when admissible as evidence.

(221). An unregistered document, requiring registration as affecting an interest in land, is admissible in evidence for any purpose for which registration is not obligatory.—12 W. R. F. B. 11.

(*a*) The authority of this ruling has been somewhat shaken by decisions published at 6 W. R. 233 and 14 W. R. p. 201, in which it was held that judgments inter alios are admissible *quantum* valeat.

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Accounts (a).

(222). The adjustment of an account may be proved by verbal evidence and need not necessarily be in writing, signed by the party to be bound.—W. R. p. 82.

Existence of Contract.

(223). A deed, which should be registered according to provisions of XX. 1866, cannot be admitted in evidence to prove existence of a contract, nor is parol evidence of the contract admissible.—10 W. R. F. B. 51.

Intention of Documents and Contracts.

(224). A deed of gift should be interpreted only according to the whole of its context, to the expressions it contains, and to the intentions of the party making it, but no verbal evidence can be adduced to explain the alleged or surmised intention of donor.—W. R. 112.*

(225). Verbal evidence is not admissible, to vary or alter the terms of a contract, in cases in which the parties intend to express in writing what their words import and in which there is no fraud or mistake—*e. g.*, to show that a deed of a sale was intended to operate as a mortgage, although never admissible as against third parties; it is, however, sometimes admissible, to contradict the terms of a contract, as between the original parties to the contract, and to negative or detract from the effect of the instrument, by showing the conduct of the parties or by proving that the written agreement has been totally waived or disregarded.—5 W. R. pp. 68, 76 (*b*).

(*a*) The following precedents have been arranged according to *facta probanda* which again are arranged as much as possible in alphabetical order.

(*b*) The authority of the latter portion of this ruling has been very much shaken by a Division Bench decision published in 11 W. R. p. 450.

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Joint nature or otherwise of Hindoo Family Property.

(226). Deeds of sale, and mortgage, and mutation of names in Collector's register is, as amongst members of joint Hindoo family, evidence that it has ceased to be joint.—1 W. R. 78.*

Documentary evidence of separation.

(227). In the case of a joint Hindoo family, the mere fact that one brother's name was used in documents relating to family property, affords no presumption of his being the sole proprietor, especially, when he is the eldest brother, or is shown to be the karta or managing member of the family.—W. R. 3.*

Use of one brother's name is not sufficient evidence of separation.

Receipts—genuineness thereof.

(228). The genuineness of receipts cannot be presumed, simply because they are not formally disputed by the landlord.—7 W. R. 526.

Rate of Rent.

(229). An admission by a ryot as to the rate at which he holds, (though against his own interest) is not evidence to prove the rate at which another ryot holds.—W. R. 23.*

Resumption.

(230). Registration by Collector in 1795 affords presumption of Lakhiraj having commenced before 1790, and not being liable to resumption.—W. R. 95.*

Sale—Bonâ fide nature thereof.

(231). The mere fact that a wife, in buying property from her husband, paid the purchase money from her own funds, does not, *per se*, prove that the sale was not collusive—it may create the presumption, that the sale was a *bonâ fide* one, but such presumption is rebuttable.—1 W. R. 319.*

In case of sale between husband and wife.

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Title.

(232). Possession is evidence of title and is a good title against a wrongdoer. But a person who has not had possession cannot, without proof of title, evict another even though that other may have no title; for possession is a good title, against any one who cannot prove a better.—W. R. p. 20.*

Possession how evidence of title.

(233). Where a man is found exercising during many years on both sides of a boundary line, without objection, rights of ownership or incorporeal rights, and it is not shown that there is any other owner of the soil, it cannot be presumed that his acts were the acts of a wrongdoer; on the contrary, title may be presumed.—9 W. R. p. 426.*

When title may be presumed from exercise of rights of ownership.

(234). A survey map is not sufficient evidence, in the absence of other satisfactory proof of title or of long antecedent possession, to establish a plaintiff's right to the land and to disturb the defendant's present possession.—2 W. R. 210.*

Survey maps when not evidence of title.

(235). The admission of a person's representative character, by the payment of rents, is not conclusive evidence against a tenant, but is only *primâ facie* evidence which the tenant can rebut—*e. g.*, if A, a tenant, has paid rent to the widow of B, he can still prove that B had by a will devised his share of rent, not to the widow, but to D in trust for E.—6 W. R. Act X. Rulings p. 71.

Admission of landlords title when not conclusive.

LIMITATION.

ACT XIII. 1848.

Award under Bhutwarah law.

Vide Clause 6, Section 1, XIV. 1859.

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ACT XIV. 1859.

Cases to which limitation does not apply.

Suits between mortgagor and mortgagee.

(236). So long as the relation of mortgagor and mortgagee exists, between parties to a suit, limitation will not apply.—W. R. 37.*

Applications to enforce Privy Council decrees.

(237). The right to enforce decrees of Her Majesty in Council is not affected by any law of limitation.—6 W. R. Misc. p. 69.

Resumption suits under Section 10, XIX. 1793.

(238). A suit, brought under Section 10, XIX. 1793, to assess or resume an invalid Lakhiraj created subsequent to December 1st, 1793, is exempt from limitation.—2 W. R. 205.

Cases in which limitation can be pleaded.

In resumption suits under Section 30, Regulation II. 1819.

(239). A suit brought under Section 30, Regulation II. 1819, must be assumed to relate only to Lakhiraj created prior to 1st December 1790, and is therefore not exempt from limitation, under Section 10, Regulation XIX. 1793.—2 W. R. 207.

In claims for uncultivated lands.

(240). Limitation by adverse possession may be pleaded to bar a claim to uncultivated lands in the same manner, and to the same extent as it can be pleaded in a claim for cultivated lands.—3 W. R. 73.

Plea of limitation not affected by conduct of parties.

Question of limitation not affected by promise of decree-holder.

(241A.) The fact that a decree-holder has bound himself not to execute a decree, before a certain date, in no way affects the question of limitation.—13 W. R. F. B. p. 44.

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Limitation in suits brought by reversioners.

Cases in which both the widow and the reversioner have the same cause of action.

(241). The fact of a Hindoo widow having been twelve years out of possession (through no act or conveyance of her own) bars a reversioner's claim, for in such a case, both the reversioner and the widow have the same cause of action.—9 W. R. F. B. 506.

(242). When a Hindoo widow has not sold any part of her husband's estate without lawful cause, but is dispossessed or never obtains possession; a cause of action accrues to her, and reversioners, suing after her death, only succeed to the same cause of action, and are bound by the same limitation by which she without fraud or collusion is bound. On the contrary, when the widow alienates her husband's estate improperly, she has no cause of action while she lives, and the reversioner's cause of action does not accrue until her death. —9 W. R. 506.

Case in which reversioner's cause of action accrues after death of widow.

(243). A Hindoo widow in 1824, assumed to adopt a son to her husband, and such son, and after him the defendant, his heir, was put in possession of the property in suit. The widow died in 1861, when reversioner instituted a suit to declare adoption illegal—held that such possession during life-time of widow was not adverse as against the widow; that cause of action to reversioner only accrued at widow's death, and the suit was consequently not barred by limitation.—12 W. R. 14.

Mode of laying down issue of limitation in suits for joint inheritance.

(244). In deciding an issue on the statute of limitation in a suit for a share of a joint inheritance, the Court below found that plaintiff had not given evidence of possession till

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date of suit, and decided the issue against him—held that such a finding was erroneous; the real issue being, whether the joint possession continued up to any time within twelve years next before the commencement of the suit.—W. R. 52.*

Cases in which fresh cause of action cannot be pleaded in order to extend limitation.

In suits for ancestral property.

(245). In a district under Mitaksharah law, A alienated ancestral property in the year 1840, and his elder son, B, sued to cancel alienation in 1853, *viz.*, after twelve years from date of alienation. It was urged that B would be barred by limitation by the general law, but that he was not in this instance, because a younger brother, C, had been born in 1846, and that a new cause of action accrued to B, or to B and C jointly, from the date of said birth—held that no such fresh cause of action accrued, and that B was barred by limitation, his cause of action having accrued when possession was taken by purchaser in 1840.—8 W. R. 15.

In suits against Gomastahs.

(246). A brought a regular suit against a Gomashtah's moveable property, under Clause 4, Section 18, VIII. 1819, after failure to recover in execution in a summary suit under Regulation VII. 1799—held that the cause of action in the regular and in the summary suit was the same, and that limitation must be reckoned from time when cause of action for D accrued; no fresh cause of action arose when the summary decree was given, and plaintiff discovered that he could not obtain satisfaction of decree in summary suit.—5 W. R. p. 100.

Mode of calculating period of limitation.

(247). In calculating the period of limitation for bringing suits, the day when the cause of action arose should be included in the computation, and, in excluding from term

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of limitation, the period during which a suit was pending, the day on which proceedings therein were commenced, and the day on which they ended, should both be counted.—W. R. p. 46.*

(248). In calculating the period of limitation, in a case in which it is sought to extend it, by reason of a pauper suit having been commenced, the suit is commenced for the purpose, when the plaint is presented to the Court, and not merely at the date of its allowance.—W. R. p. 53.*

Time from which limitation runs.

In suits for breach of contract.

(249). In a suit for a breach of contract to be performed at different times, limitation will count from each breach of contract as it arises, and separate damages may be recovered for each breach. —6 W. R. Act X. Rulings 61.

In suits on instalment bonds.

(250). When a suit was brought upon an instalment bond, and not upon any fresh agreement between the parties, the period of limitation will run from the time when default was made in payment of the first instalment, in consequence of which default, the whole amount became due.—7 W. R. 21.

In suits to contest order, under Section 77, X. 1859.

(251). When a suit is brought in a Civil Court (under Section 77, X. 1859,) to establish a title against which an adverse decision has been passed on appeal from the Deputy Collector, the period of limitation for the civil suit runs from date of decision on appeal and not from date of original decision.—5 W. R. Act X. Rulings p. 23.

Case in which period of limitation is not extended.

Limitation under XIV., 1859, not extended by holidays.

(252). Under Act XIV., 1859 a suit is barred by limitation, when the time for its institution expires on a holiday.—3 S. C. C. p. 5.

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Precedents illustrating special sections of Act XIV. 1859.

Clause 6, *Section* 1.

Decision under Bhutwarah law.

(253). The decision of a Collector under Bhutwarah law is not an award under Clause 6, Section 1, XIV. 1859.—W. R. 12.*

Suits for amendment of settlement and fixing of rights of parties not contesting between themselves before Collector.

(254). Act XIII. 1848 applies only to suits for contesting the justice of an award as between the parties, and not to suits for the purpose of amending a settlement and establishing the rights of persons who were not parties contesting between themselves before the Collector.—W. R. 128.

Clause 9, *Section* 1.

Limitation in suits for price of goods sold wholesale.

(255). A suit for price of goods sold wholesale, if there was no written agreement, must be brought within three years from the time the cause of action accrued under Clause 9, Section 1, of XIV. 1859.—9 W. R. p. 193.

Clause 12, *Section* 1.

Limitation in suits to contest order under XIX. 1841.

(256). A suit to try the title, and to obtain possession under that title, brought with a view to setting aside a summary order under Act XIX. of 1841, must be laid within twelve years from date of order under Clause 12, Section 1, XIV. 1859.—7 W. R. 199.

Limitation in suits to establish lien on and to effect sale of land.

(257). When there is an unregistered bond to secure the payment of a sum of money with interest, and, by the terms of the bond, lands also are charged, by way of simple mortgage, with the payment of the debt, a suit, to have it declared that lands are charged with payment of the debt, and for an order for the sale of the lands in satisfaction of the debts,

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falls within Clause 12, Section 1, XIV. 1859, and must be brought within twelve years from date of cause of action.—9 W. R. p. 170.

And in suits by persons wrongfully dispossessed under a certificate of sale.

(258). A plaintiff having been dispossessed under a certificate of sale which was not conformable to or warranted by the sale itself, did not make complaint to the Court executing the decree, but brought a suit for confirmation of title and to be restored to possession of property—held that suit was in time if brought within twelve years from time of dispossession.—7 W. R. 253.

And in suits by persons wrongfully dispossessed by sale in execution.

(259). The plaintiff having been dispossessed under a sale in execution against other parties, is entitled to sue to establish his title, and to recover possession at any time within twelve years from the time at which he was dispossessed according to Clause 12, Section 1, XIV. 1859.—7 W. R. 256.

Clause 15, *Section* 1.

Limitation suits for recovery of mortgaged property.

(260). When a mortgagor, after a mortgage has been satisfied, sues for recovery of the mortgaged property, the case comes within Sec. 1, Cl. 15, XIV. 1859.—9 W. R. 187.

Clause 16, *Section* 1.

And in suit for mortgagor or surplus collections.

(261). When a mortgagor sues for surplus collections which have been received by mortgagee, the case falls within Clause 16, Section 1, XIV. 1859.—9 W. R. p. 187.

And in suit to recover personal property carried away and appropriated.

(262). A suit to recover personal property carried away and appropriated by defendant, is not a suit for damages from injury to personal property within meaning of Clause 2,

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Section 1, XIV. 1859, but is governed by limitation prescribed in Clause 16, Section 1, of same enactment.—W. R. 126.

Section 2.

Limitation applying to suits against the representatives of a deceased Gomastah.

(263). The representatives of a Gomastah who had for the last four years of his life taken the money of his employer in advance, for the purpose of his business, were sued for the balance of the account of such sums, after giving credit for the amount of the Gomastah's annual salary—held that the suit being brought within six years from the date of the Gomastah's death, was not barred by Section 2, XIV. 1859.—2 B. L. R. F. B. 139 (*a*).

And to suits against mortgagee after satisfaction of mortgage.

(264). A mortgagee, after the mortgage has been satisfied, is not a trustee for the mortgagor within the *purview* of Section 2, XIV. 9 W. R. p. 187.

Section 14.

(265). According to Section 14, XIV. 1859, a plaintiff is not entitled to deduct the time occupied by him in prosecuting a former suit, in which he was non-suited, much less the time occupied in appealing from that decision, and the time intervening between the non-suit and the filing of the appeal.—6 W. R. 184.

Cases in which deductions from period of limitation were not allowed.

(266). A obtained a decree against B, for possession of land. On appeal by B, the decree was reversed, and B applied for restitution of land and mesne profits. She was put in possession of the lands, and the Principal Sudder Ameen directed mesne profits to be paid.

(*a*) Reported in Indian Digest as Full Bench, but noted in Vol. IX. W. R. p 334, as a ruling of a Division Bench.

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The order was reversed on appeal, because the Sudder Court had not awarded mesne profits. B then sued separately for mesne profits, and contended that his suit, which would otherwise have been barred by limitation, was not so barred, as the time spent by him in endeavouring to obtain mesne profits from the Principal Sudder Ameen in the execution case should be deducted—held that the suit was barred and the said time could not be deducted, as the order awarding mesne profits had not been reversed on the ground of defect of jurisdiction, even though B had been prosecuting the same cause of action within meaning of Section 14, XIV. 1859.—9 W. R. p. 402.

Section 20.

(267). A tried to execute a decree against B, and it was decided that the decree was barred by limitation, and B got an order for costs against A—held that such an order was not a summary decision under Section 22, XIV. 1859, but an order under Section 20; B could sue A, at any time within three years from date of order—13 W. R. F. B. p. 74.

Order for costs in an execution, is not a summary decision under Section 22, but an order under Section 20.

(268). When a previous application for execution was barred by limitation, but erroneously admitted, subsequent applications are nevertheless barred under Section 20, XIV. 1859—10 W. R. F. B. 8.

Effect of erroneous admission of application for execution.

(269). The words "some proceeding" in Section 20, XIV. 1859, include every application for execution *bonâ fide* made and all acts done either by the Court—*e. g.*, notice under Section 216, VIII. 1859 or *bonâ fide* by the applicant for enforcing a decree or keeping it in force.—6 W. R. Misc. p. 98.

What is meant by the words 'some proceeding.'

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Striking off a case is not "a proceeding" under Section 20.

(270). The mere striking an execution case off the file is not a proceeding to enforce a decree under Section 20, XIV. 1859.

In such a case limitation will run, not from date when case was struck off, but from date when application was made for execution, or when a *bonâ fide* act was done in furtherance of the application.—6 W. R. Misc. p. 98.

And limitation under Section 20 will not run from date of striking off.

(271). Application for notice, notice itself, issue of process, execution of process, are all separate and distinct acts, which, if *bonâ fide* taken, would bar operation of Section 20, XIV. 1859, but no proceeding would do so unless it were *bonâ fide*.—6 W. R. Misc. 98. *Vide* also 9 W. R. 443.

Acts which bar limitation.

If *bona fide* in their nature.

(272). An avowed relinquishment of an attachment of judgment debtor's property is not a proceeding to keep a decree alive under Section 20, XIV. 1859.—13 W. R. F. B. 44.

Relinquishment of attachment not a proceeding under Section 20.

(273). The period of limitation prescribed by Section 20 of XIV., 1859, is to be calculated from the date of judgment, decree, or order, which the person in whose favor it is given is at liberty to enforce by execution, whether such an order or judgment be that of a Lower Court or given on review or appeal. If, upon an application by the judgment debtor for review or a petition of appeal, the opposite party appears to prevent his decree being set aside, either on review or appeal, and afterwards seeks to execute it, his application for execution is within time if made within three years from the date of his appearing.—7 W. R. p. 521.

Mode of calculating period of limitation under Section 20.

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Section 21.

(274). According to Sections 20 and 21, XIV. 1859, taken together, process of execution may be issued upon decrees in force at the time of the passing of the Act within time mentioned in Section 21, without any prior proceedings being taken, but if an application is made to enforce such a decree more than three years after the passing of the Act, no execution shall be issued on it, unless some proceeding shall have been taken to enforce it, or to keep it in force within three years next preceding the application for execution. If such proceeding has been taken, it is not too late, although the deeree may have been in force at the time of passing Act XIV. 1859, and the application for execution is made more than three years after the passing of the Act.—7 W. R. p. 515.

Period of limitation applying to decrees obtained previous to passing of Act XIV. 1859.

Limitation under VIII. 1869.

Section 29.

(275). A obtained a decree, merely declaring his right to enhance, on the 31st August 1864, and within one year from the said date sued for arrears of rent at an enhanced rate for 1860 and preceding years—held that the suit was barred by limitation under Section 29, VIII. 1869, as the cause of action accrued, not when declaratory decree was passed, but consisted in the non-payment of arrears; plaintiff could have sued without obtaining a declaratory decree.—6 W. R. p. 77 Act X. Rulings.

Limitation under Section 29, VIII. 1869, is not extended by the passing of a declaratory decree.

Limitation under Act VIII. 1869.

(276). Execution may issue under Section 58, VIII. 1859, after the lapse of three years, so long as a proper application has been made

Interpretation of Section 58, VIII. 1869.

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within three years from date of judgment.—13 W. R. F. B. p. 3.

MORTGAGE.

Date on which Regulation XVII. 1806 took effect.

(277). Regulation XVII. of 1806 took effect, not on date on which it was passed by Governor-General in Council, *viz.*, 11th September 1806, but from date on which it was promulgated; such date of course varied in different districts. —5 W. R. 88.

Intention to create charge on land is sufficient to create mortgage.

(278). In creating a mortgage it is sufficient, if it appears from the deed that it was intended to create a charge on the land; *semble* that a simple convenant not to alienate until payment would not constitute a mortgage.—13 W. R. F. B. p. 83.

Once a mortgage always a mortgage.

(279). When the original transaction is an usufructuary mortgage, the mortgagee is entitled to nothing besides the repayment of his principal and interest for the usufruct of the property. The Court will not allow additional advantages to be obtained, through the necessity of the debtor, by the conversion of a mortgage into a transaction of a different character. Once a mortgage always a mortgage is a principle not to be departed from; consequently an estate mortgaged is always redeemable.—W. R. 79.*

A deposit accompanied with a request for inquiry is not a legal tender within meaning of law.

(280). A deposit was made in Court during foreclosure proceedings by a mortgagor, in respect of a mortgage debt, a few days before the expiry of the year of grace. The deposit was accompanied by a petition, praying that the money so deposited might be kept, pending, an enquiry into certain objections made by him relative to

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amount due under mortgage—held that such deposit was not a tender within the meaning of the law.—W. R. 14.*

Nor will a deposit accompanied with a denial of mortgage save right of redemption.

(281). If a mortgagor deposits money in Court, without placing any actual restriction on its being paid over to mortgagee, but with notice that the mortgagor denies the existence of mortgage, and intends to recover the money so deposited, such deposit will not save right of redemption under Regulations I. 1798 and XVII. 1806.—6 W. R. p. 225.

Member of joint Hindoo family cannot mortgage his undivided share to raise money for himself.

(282). A member of a joint Hindoo family has no authority to mortgage, without consent of his sharers, his undivided share in a portion of the joint family property in order to raise money on his own account and not for benefit of the family.—12 W. R. F. B. 2.

Mode of effecting redemption of rent free land assessed by Government after mortgage.

(283). A mortgagor of Lakheraj land subsequently assessed with Government revenue, is not entitled to redeem except on payment of amount paid by mortgagee as Government revenue, in addition to the money due under the mortgage. But in a suit for redemption in which the mortgagor deposited, before suit, the amount of the principal sum borrowed by him, he is entitled to a decree, on payment into Court of the further sum paid for Government revenue.—3 W. R. 174.*

Alienees of mortgagor an redeem even if mortgagee was evicted and never regained possession.

(284). A mortgaged his land to B, in the form of a zur-i-pasghee lease, to continue so long as the mortgage money remained unpaid. A evicted B, who sued for possession and profits. He never ob-

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obtained possession but recovered profits. C and D, who had purchased from A in separate shares, then sued to redeem —held that they could redeem, if they paid the full amount of mortgage money—held also that B, having been wrongfully evicted by A, was not bound to account to C and D for the mesne profits received by him in execution, such mesne profits being different from the usufruct of a mortgagee in possession.—6 W. R. p. 240.

But evicted mortgagee need not account to alienees for mesne profits obtained in execution of decree against mortgagor.

(285). The year of grace for payment under provisions of forcelosure of Regulation XVIII. 1806 runs from date of service of notice under Section VIII. of that Regulation.—10 W. R. F. B. p. 27.

Date from which year of grace runs.

ONUS PROBANDI.

(286). The general rule of evidence is that he who avers a title will have the *onus* of proving it, even if, in so doing, he may have to prove a negative.—9 W. R. p. 190.

General rule.

Cases in which onus probandi is on plaintiff.

(287). When the purchaser of ancestral property subject to Mitakshara law sues (after cancelment of the sale by a son) for the refund of purchase money, the *onus probandi* is on him to to prove that the purchase money was carried to the assets of joint family estate, that the son benefited by it, or that the purchase money was applied in freeing the ancestral property from an encumbrance, thus giving the purchaser the right to stand in the place of the encumbrancer.—9 W. R. p. 511.

To prove application of purchase-money.

For onus probandi in applications under Section 246, *VIII.* 1859. *Vide Civil Procedure Code, Section* 246.

(288). When a subsequent purchaser proves as against a

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prior unregistered mortgagee that he is a *bonâ fide* purchaser for value, the *onus* lies on the unregistered mortgagee to show that he actually advanced the money as alleged in the mortgagee bond, and that the bond was executed before the defendant's purchase.—5 W. R. p. 63.

To show *bonâ fide* nature of mortgage.

(289). When a grand-daughter purchased from a grandmother and attempted to oust a stranger who had purchased *bonâ fide* and without notice, the grand-daughter will have the *onus* of proving *bonâ fides* fully and satisfactorily even if no motive for fraud is proved.—W. R. 77.*

And of purchase.

(290). The *onus* in a suit by a landlord for enhancement under the rent law, on the ground that productiveness of the land has increased, rests on the plaintiff, who must prove, that the productiveness was increased, otherwise than by the agency or at the expense of ryot.—9 W. R. 190.

To prove increase of productiveness of land otherwise than by agency of ryot.

(291). When a party sues for a moiety of certain property, on the ground that it is joint, the *onus* is on him to prove that the property is joint family property, failing which, his suit must fail.—W. R. 57.*

To prove joint nature of family property.

(292). Plaintiff sued for possession on an allegation, that property was in management of A. A denied management and set up plea of purchase; possession by A for more than thirty years having been proved, it was held that the *onus* of proving possession for his benefit had been rightly thrown on plaintiff.—W. R. 8.*

To prove fiduciary possession by defendant.

(293). In a suit to enhance rent when defence is that the land is rent free, the *onus probandi* is on plaintiff to show that defendant has paid

To prove payment of rent.

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rent; unless this is done, the suit cannot proceed.—W. R. 115 (*a*).

To prove payment of rent after 1st December 1790.

(294). A suit to resume Lakhiraj land under Section 28 of X. 1859, will not lie on the ground that tenure is invalid, but merely on the ground that the Lakhiraj was granted after 1st December 1790, and the *onus probandi*, to show that rent has been paid after that date, lies on plaintiff.—W. R. 81.*

To prove date of promulgation of Regulation XVII. 1806.

(295). Regulation XVII. 1806 took effect not from date on which it was passed, but on date on which it was promulgated—held that plaintiff who sued for redemption and whose property, if not paid, was to have vested in defendant, on 28th September, 1806, was bound to show that Regulation XVII. 1806, was promulgated in the district in which property situated before 28th September 1806; as he did not do so, plaintiff's suit was dismissed.—5 W. R. 88.

Cases in which burden of proof lies on defendant.

To show creation of Lakhiraj tenure after 1790.

(296). In a suit to recover possession of land from which plaintiff had been ousted by defendant under Section 10, XIX. 1793, on the ground that it formed part of an invalid Lakhiraj created after 1st December, 1790—held that the defendant zemindar, having no right to oust, unless the Lakhiraj was created after 1799, must prove that it was so created, and it is not for the Lakhirajdar to prove its existence before that date.—W. R. 174.* *Vide* also 7 W. R. 458.

(297). In a suit under Regulation II., 1819, it was held

(*a*) It would, however, appear that some *primâ facie* proof of an ostensible rent-free holding is necessary, *vide* 6 W. R. Act X. Rulings, but *vide* also 11 W. R. p. 35, where the contrary was held.

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To prove creation of Lakhiraj tenure before 1790.

that the *onus* of proving existence of Lakhiraj before 1st December 1790, lay on defendant Lakhirajdar.—W. R. 95* (*a*).

(298). When a ryot puts in receipts of rent, the *onus probandi* is on him to prove them, even if they are not formally disputed by landlord.—7 W. R. p. 526.

To prove receipts of rent even when not formally denied.

(399). Held that in a case in which defendant, by giving a kabuliyut for portion of the land in suit, acknowledged himself to be plaintiff's tenant, the *onus* was on defendant to prove his plea of not being plaintiff's tenant, as to remaining alleged rent free land.—W. R. 15* (*b*).

To prove non-tenancy as to portion of land claimed.

(300). When, in a suit on a bond, which recites that consideration passed, the defendants admit execution, but aver that they received no consideration or only part of it, the *onus* lies on defendants to prove that the recital of the bond is not correct.—12 W. R. F. B. 25.

To show non-payment of consideration.

(301). A wife sued her husband to recover property of which she said her husband had violently and fraudulently deprived her—held that notwithstanding an endorsement by the wife (in her husband's favor) of Government securities, the *onus probandi* was on the husband defendant, notwithstanding the general rule that he who alleges fraud must prove it.—W. R. 62.*

Special case in which *onus probandi* was thrown on husband defendant.

(*a*). This ruling is somewhat opposed to other rulings; it would appear from it, that in suits under Regulation II, 1819, and in suits for resumption generally the *onus probandi* is still on the lakhirajdar. *Vide* also 4 M. 466.

(*b*) The authority of this decision has been very much shaken by subsequent Division Bench decisions.—*Vide* 8 W. R. 183, 6 W. R. Act X. R. 100, 5 W. R. Act X. R. 37, 10 W. R. 205.

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To prove self-acquisition of property by member.

(302). The existence of joint family property being admitted, the presumption arises that all acquired property belongs to the family; and the defendant, in a suit for joint family property, who sets up a plea of self-acquisition, is bound to prove that the joint estate was so small that, after providing for the maintenance of the family, nothing remained to form a fund for the purchase of other properties for the benefit of the joint family.—8 W. R. p. 226.*

PENAL CODE.

Resistance of Civil process is punishable under Section 186, Indian Penal Code.

(303). Resistance of a process of a Civil Court is punishable by the Magistrate under Indian Penal Code, Section 186.—10 W.R. Criminal Rulings p. 43.

PLEADERS.

Right to plead in Mofussil.

(304). Pleaders of the Calcutta Small Cause Courts cannot be permitted to plead in the Mofussil Small Cause Courts.—S. C. C. R. p. 55.*

Number of pleaders ex-parte motions.

(305). It is not the practise of the High Court to hear more than one Counsel, or pleader, in support of an ex-parte motion.—6 W.R. p. 114, Misc. Rulings.

PRE-EMPTION.

A previous demand or declaration of intention is not equivalent to a formal claim for pre-emption.

(306). A mere declaration of an intention to exercise a right, not yet accrued, is not a claim to a right of a pre-emption. It is immaterial whether a formal demand of pre-emption is made at any other time

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than after the sale becomes absolute, and such a demand does not amount to a claim of pre-emption.—2 W. R. 215.

Right of pre-emption does not arise on a mere conditional sale.

(307). No right of pre-emption arises on a mere conditional sale or mortgage, whilst any right of redemption remains with the mortgagor.—2 W. R. 215.

Nor (when no local custom exists) when vendor is a Mahomedan and the purchaser a Hindoo.

(308). Where no local custom exists as to pre-emption amongst Hindoos, the Mahomedan law of pre-emption on the grounds of vicinage and partnership, does not apply, when the person claiming the right, and the vendor, are Mahomedans, and the purchaser is a Hindoo.—13 W. R. F. B. p. 21.

Application of right of pre-emption on ground of vicinage.

(309). The right of pre-emption on ground of vicinage does not extend to estates of large magnitude, but only to houses, gardens, and small parcels of land.—14 W. R. F. B. 1.

Right of pre-emption on ground of partnership, applies to large as well as to small estates.

(310). A partner, not in a house or in a small enclosure, but in a considerable estate, has, according to Mahomedan law, a right of pre-emption, when any one of his co-sharers, in such an estate, sells his share to a stranger.—14 W. R. F. B. p. 1.

Right of pre-emption amongst Hindoos.

(311). A right or custom of pre-emption is recognized as prevailing among Hindoos in Behar and some other provinces in Western India. In districts where its existence has not been judicially noticed, the custom will have to be proved. Such custom where it exists must be presumed to be founded on, and to be co-extensive with the Mahomedan law, unless the contrary be shown. The Court may, as between Hindoos, administer

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a modification of that law as to the circumstances under which the right may be exercised, when it is shewn that the custom, in that respect, does not go so far as the Mahomedan law of pre-emption. But the assertion of a right of suit must always be preceded by an observance of the preliminary forms prescribed by Mahomedan law.—W. R. 143.

REGULATION XVI. 1797.

(312). After execution has once gone out under a decree of the High Court, subsequently appealed to Her Majesty in Council, it is beyond the power of the High Court and not within scope of Regulation XVI. 1797, 1, 4, to set aside the execution.—8 W. R. 145.

High Court cannot set aside execution when once issued.

(313). Plaintiff obtained a decree for possession which was reversed by the High Court on appeal, and restitution of property was ordered. Plaintiff having appealed to Privy Council, applied to be allowed to remain in possession of the property upon the security which he had given—held that the High Court had no jurisdiction under Section 4, XVI., 1797 or Section 36, XXIII., 1861, to suspend restitution of property, and that the defendant was entitled to enforce such restitution, without giving security. —6 W. R. Misc. 111.

Or suspend, pending appeal to Privy Council, restitution of property by plaintiff to defendant.

REGULATION V. 1812.

(314). The acceptance of rent for forty years, ratifies the original grant of a pottah at fixed rate of rent although granted previous to Regulation V. 1812, Section 2, which first empowered proprietors to grant leases for any period.—W. R. 34.*

Acceptance of rent renders valid a Mokurruree pottah, granted previous to Regulation V. 1812.

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REGULATION XXVIII. 28 1828.

(315). Section 11, Regulation XXVIII. 1828, requiring succession to mokurruree tenures to be registered and reported to the Collector within six months, refers only to the security of the revenue and not to private interests.—W. R. 34.*

Application of Section 11, Regulation XXVIII. 1828.

RENT LAW, ACT VIII. 1869.

Section 4 (*a*).

(316). Held by majority of the Court, that a Baolee rent varying yearly in amount with the varying amount of the gross produce, although fixed as to the proportion it is to bear to the produce, is not a fixed unchangeable rent to which the presumption of law as laid down in Section 4, VIII. 1869 is applicable.—4 W. R. Act X. Rulings 23.*

A Baolee rent is not a fixed rate of rent.

(317). To be entitled to the benefit of presumption under Section 4, uniform payment for twenty years immediately preceding suit must be proved—hence a tenant, who has been dispossessed and is out of possession at time of suit, is not entitled to benefit by the presumption.—W. R. p. 31.*

Case in which presumption under Section 4 cannot be pleaded.

(318). The presumption of occupancy from time of permanent settlement, created by Section 4, X. 1859, is rebutted by the ryot relying on a pottah granted after permanent settlement.—W. R. 22.*

Case in which presumption under Section 4 is rebutted.

(319.) The tenant is not estopped from benefit of the presumption under Section 4, VIII. 1869, simply because

(*a*) For convenience of reference, the corresponding sections of Act VIII. 1869 have been substituted for the sections of Act X. 1859.

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he does not, in terms, claim to hold from the permanent settlement; if he uses words equivalent to such a claim.—5 W. R. Act X. Rulings p. 25.*

Cases in which the tenant is not estopped from pleading.

(320). The non-production of a pottah is not a bar to a tenant claiming the benefit of presumption under Section 4.—4 W. R. Act X. Rulings 25.*

Presumption under Section 4 of Act VIII. 1869.

(321). A ryot is not estopped from enjoying the benefit of having held, at a uniform rate, since permanent settlement, merely by reason of his having stated that he held under a pottah not inconsistent with such presumption, which pottah he had failed to prove.—6 W. R. Act X. Rulings p. 57.*

Section 6.

Occupation as a trespasser does not create right under, Section 6, VIII. 1869.

(322). Occupation by a trespasser cannot confer a right, under Section 6, Act VIII. 1869, and cannot be taken into account, in considering, whether such trespasser has occupied as a ryot for twelve years.—W. R. 146.*

Section 10.

Variance on plaintiff's part is fatal to a suit for a kabuliyut at specified rates.

(323). When a landlord sues for a kabuliyut at given rates of rent, and the Court finds that rate to be too high, the plaintiff is not entitled to a decree at the lower rate, which the Court may think fair and equitable; but his suit should be entirely dismissed.—10 W.R. F. B. 14.

Necessity of notice.

(324). A suit for a kabuliyut at an enhanced rate of rent will not lie without previous notice.—12 W. R. F. B. p. 27.

Necessity of tendering pottah.

(325). A landlord must tender a pottah before he can ask for a kabuliyut.—12 W. R. p. 27.

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Section 14.

(326). Section 14 of VIII. 1869 is applicable not only to ryots having rights of occupancy, but to all under-tenants and ryots. The landlord cannot, by giving notice of enhancement, compel the tenant to pay more than a reasonable rent, and he cannot enhance, without notice specifying the grounds of enhancement. The *onus* of proving the existence of the grounds alleged is upon the landlord.—10 W. R. F. B. p. 33.

Section 14 of Act VIII. 1869 is applicable to all ryots and under-tenants.

Section 18.

(327). The stipulation in a pottah, "after this in no manner shall enhancement be demanded," precludes an enhancement during the existence of the lease, notwithstanding that in the previous part of the pottah the words "year by year" are used.—2 W. R. 225.*

(328). Ryots holding land at fixed rates of rent which have not been charged since permanent settlement, are not liable to have their rates enhanced even by purchasers at a sale for arrears of revenue under Act I. of 1845.—7 W. R. 176.

Cases in which tenants are not liable to claims for enhanced rent.

(329). In the well-known Thakooranee's case, it has been held that in suits for enhancement on the second ground noted in Section 18, VIII. 1869, the enhanced rate of rent awardable shall bear to the former rate the same proportion as the present value of the produce bears to the old value—calculated on an average of three or five years next before date of alleged rise in value of produce. The landlord, however, will be at liberty to prove that the former rate was below the

Manner in which rent can be enhanced when second ground of enhancement of Section 18 is put forward by landlord.

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ordinary rates payable for similar lands in places adjacent, in consequence of a covenant entered upon by the tenant to cultivate indigo or other crops. If the landlord satisfies the Court that this was so, the former rate must be corrected, so as to represent the ordinary rate current at the period of the contract, before it can be admitted to form a term in the calculation to be made according to the method of proportion above laid down.

Second ground is not applicable when rents have been recently adjusted.

In the same decision it was also held that the second ground of enhancement of Section 18, and consequently the rate of proportion above laid down, only applied to cases in which there had been no recent adjustment of pergunnah rates.

Interpretation of words "fair and equitable," in Section 5, VIII. 1869.

In the same decision it has been laid down that the words "fair and equitable" in Section 5 are equivalent to pergunnah rates, *i. e.*, rates payable for similar lands in places adjacent, and rates fixed by the law of the country.—3 W. R. Act X. Rulings p. 29.

Section 26.

Suit will lie to enforce registry.

(330). A civil suit will lie to enforce registry by a zemindar under Section 26, VIII 1869.—12 W. R. F. B. 30.

Section 52.

Application of fifteen days' proviso.

(331). Held that in a suit for the cancelment of a lease on account of breach of its conditions, the breach complained of consisting in the non-payment of rent for a particular period specified in the lease, the lessee is entitled to avail himself of the proviso, for stopping execution, by payment of amount of arrears

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within fifteen days from date of decree.—10 W. R. F. B. p. 12.

Sections 52 *and* 53.

No ejectment is legal except when effected by means of a suit.

(332). In a Full Bench decision passed with reference to a suit under Clause 6, Section 23, of Act X. 1859, it is laid down that no landlord can eject any tenant, except by means of a suit; at least, if he does, and the tenant sues him within six months, under Section 15, XIV. 1859, he will be entitled to recover possession, without reference to landlord's title to eject him.—9 W. R. p. 513.

Section 59.

Effect of sale held previous to Act VIII. 1865, on validity of encumbrances.

(333). A sale for arrears of revenue under Section 59 of Act X. 1859, held previous to passing of Act VIII. 1865, is not free from encumbrances created by the defaulter before the sale, unless the right of selling or bringing to sale the tenure for an arrear of revenue has been specially reserved, by stipulation, in the engagements interchanged at the creation of the tenure.—7 W. R. p. 260.

Right of purchaser to khass possession of tenure sold.

(334). A sale for arrears of rent under Section 59, VIII. 1869, entitles the purchaser to be put in khass possession of the entire tenure, although the sons of the defaulting ryot have occupied huts on the hand for more than twenty years. The circumstance that the purchaser happens to be the superior landlord does not diminish his right.—8 W. R. p. 478.*

Right of occupancy does not make a tenure transferable.

(335). The gaining of a right of occupancy in a non-transferable tenure, under VIII. 1869, does not render the tenure transferable.—7 W. R. p. 528.

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RESUMPTION.

Tank granted rent-free, is not liable to resumption when use of water by tenants has been reserved.

(336). A tank granted rent-free subsequent to 1790, is, as a rule, liable to resumption, but is not so liable when there is a reservation of a right to the use of the water by the tenants of the grantor or zemindar. Such a reservation is a benefit or service, in the nature of rent received by zemindar. Such a grant is therefore, either not intended to be dealt with under Section 10, XIX. 1793, or is a grant which the zemindar had power to make under Regulation XLIV. of 1793.—2 W. R. p. 15.

Rent-free grants are not resumable by heirs or representatives of grantor or purchasers of estate by private sale.

(337). A grant by a Zemindar of a peice of land rent-free is valid as against the heirs or representatives of the grantor or as against purchasers of the estate by private sale, and cannot be resumed under Section 10, XIX. 1793, although not valid as against an auction purchaser at sale for Government arrears.—9 W. R. p. 1.

STAMP LAW.

Stamp required for a Sunnud on authority to collect rent.

(338). A Sunnud which authorizes a Gomastah to collect rents and to sue for them, requires to be stamped with four Rupees under Article 43, Schedule A, X. of 1862.—10 W. R. F. B. 39.

In certain cases of remand, the stamp duty can only be refunded proportionately.

(339). Held by the majority of the Court that, when a suit is remanded in part, the appellant is (under note F., Schedule B., Act X., 1862,) entitled to only a proportionate refund of the stamp duty.—6 W. R. Misc. Rulings p. 65.

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SUCCESSION.

Law applicable to migrating Hindoo family.

(340). A Hindoo family migrating from one province to another, and acquiring property in the territory in which it settles, must be presumed, until the contrary is proved, to carry with it and retain all its religious ceremonies and customs, and consequently its law of succession.—W. R. 75.

An estate once vested, cannot be divested in favor of the son of a person excluded for blindness, such son having been born after death of ancestor.

(341). A Hindoo died in 1832, leaving an only son, who had been blind from the time of his birth, and two widows, after whose death in 1849, a nephew succeeded to the property, the blind man being excluded by Hindoo Law. In the year 1861, the blind man died after having married, and had a son in 1858—held that by Hindoo law, such a son could not inherit and oust the nephew, as the estate, having once vested, could not be divested in favor of the son of an excluded person born after death of an ancestor. Such ruling does not apply to the case of a son of an excluded person, if having been begotten at time of ancestor's death, he is afterwards born capable of inheriting.—11 W. R. appellate original jurisdiction.—F. B. p. 11.

Succession of adopted son.

(342). An adopted son cannot succeed to his adoptive maternal grand-father's estate, when there are collateral heirs.—W. R., 121.*

And of father's brother's daughter's son.

(343). A father's brother's daughter's son is an heir according to Bengal School.—13 W. R. F. B. p. 49.

Succession according to Mitakshara law.

Succession of daughter or daughter's son.

(344). *Semble* according to Mitakshara law, a father's brother's daughter's son cannot inherit.—W. R. F. B. 176.*

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Succession of nephew.

(345). In the absence of nearer relations a man may be heir to his mother's brother as regards property subject to Mitakshara law.—10 W. R. F. B. 76.

Succession of widow.

(346). According to Mitakshara law, a widow cannot succeed to her husband's share in a joint Hindoo family property, or retain possession against his surviving brothers, she is only entitled to maintenance.—5 W. R. 78.*

(347). *Vide* also 12 W. R. F. B. p. 1, where it was held that when a member of a joint Hindoo family dies without heirs, the property vests, not in the widow, but in the surviving members of the joint family.—12 W. R. F. B. 1.

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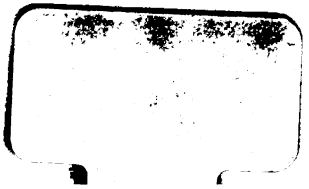

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